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COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 14 (b) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS: MINORITIES

Written statement submitted by the Caucasians United for
Reparations and Emancipation (CURE/AFRE), a non-governmental
organization on the Roster

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[11 January 1999]

Written statement on behalf of African-Americans

1. Silis Muhammad is the spiritual son of the Honourable Elijah Muhammad. But for him, we so-called African-Americans would not have the courage to make the following statement to the Commission on Human Rights. We thank him for the great good he did for us, and perchance too for humanity.
2. Our question is whether we, the so-called African-Americans in the United States of America, are in possession of our human rights.
3. Article 27 of the International Covenant on Civil and Political Rights, which the United States of America has ratified, states, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."
4. We, the so-called African-Americans, were taken away from the culture of our origin. The slave ship took us from our place of beginning. The slave master did not return us to our culture, nor did he bring our culture and teach it to us. Nor has the Government of the United States of America, to date, sought to teach us our culture, or return us to it. We are absent the knowledge of our cultural beginning.
5. The slave ship took us away from our ancestral religious belief. We were dislodged from the knowledge of our lineage to Allah, God. The slave master taught us of his religion ultimately, and of his lineage to a supreme being whom he refers to by the name of God. The federal or local governments of America did not teach nor make provisions for us, the so-called African-Americans, or slaves, to learn the knowledge of our transmissible religious belief. We are absent the knowledge of our ancestral tradition of religion.
6. Regarding our original language, there were not any provisions set in motion by the local and federal governments of America for us to cultivate and continue speaking our language. To the contrary, provisions were set in motion to prevent us from speaking our language, originally. We were intentionally separated from one another, with total disregard, during slavery such that we would not be able to speak our language. Ultimately, we lost the knowledge of it.
7. Thus, to the extent that we were deprived of our culture, our religion and our language, we are not in possession of our human rights. Moreover, to the extent that we, especially during the period of chattel slavery, were constrained by the laws, the culture, the religion and the language of the Anglo-American, we lived, and to this day live, under a tyrannical government. By the acts of forced assimilation the Anglo-Americans have sought also to subsume us, the African-Americans, into its Constitution.
8. The desires, the perpetual existence and the human rights of African-Americans are not embodied in the majority Constitution, which, from its origin, is absent any input from us. The laws arising from America's majority Constitution do not embody the living will of the African-Americans.

9. Thus, we feel we cannot intelligently argue the issue of violation of our human rights. While we are human, we have not been in possession of our human rights for the past 433 years. Our human rights were wilfully destroyed, utterly. They were destroyed by the slave masters, under the auspices of the United States central and local governments, during our long sojourn as slaves in America.

10. The Universal Declaration of Human Rights states that recognition of the inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Here, at the beginning of the histories of the so-called African-Americans, the enslaved Africans brought to America were defined in the same terms as the "cattle" belonging to the Anglo-American rulers. Thus, our rights were those of their "cattle"; ours were not human rights. Yet we were then - and are, still, members of the human family.

11. Our inalienable rights were distorted so completely that we are damaged goods, still. We are lost from our original inherent culture, religion and language. America cannot lawfully force us to accept the choices which it deems to be our inalienable rights; nor can it force us and our progeny to abandon the hope for the reclamation of our own. One hundred and thirty four years of forced assimilation have not abrogated the desire to know, and to be ourselves. Today, we have no permanent national recognition, as a result of slavery. We have been identified as slaves, Niggers, Negroes, Coloureds, Black Americans, and today we are so-called African-Americans.

12. Thus, we are to this day a revolving nation, suspended within a nation, rent from our roots as a result of slavery and its lingering effects. We are detached, still, from our inalienable rights. To this extent, the very foundation upon which freedom, justice and peace among nations is established is for us non-existent: our inalienable rights are extinct! And this poses a threat to peace for the United States of America, for the Americas, and potentially for Europe. Why? It is a threat because of the despair of the many, which will endlessly be ignited to loathing and/or rioting if this abnormal situation is not reversed by the few humanitarians who aim, lawfully and by sanctions, to efficaciously stamp out violations of the Universal Declaration of Human Rights. As in the contemporary case of Iraq, the United Nations, urged by the United States, sent inspectors to Iraq so as to avert what America believes to be a threat to humanity.

13. The United States of America, for the past 50 years, has violated the Universal Declaration of Human Rights. During the past 50 years, America has not seen fit to restore us to our inalienable rights, or them to us; nor has it seen fit to grant to us the choice to be, or not to be Americans. Therefore, this statement is a request for United Nations assistance in the establishment of a forum (perhaps under the auspices of the Sub-Commission). The type of forum requested is similar to the one proposed for indigenous peoples. We wish the United Nations to establish a forum within the boundaries of the United States, preferably at United Nations Headquarters.

14. The Government of the United States ordained slavery and forced assimilation upon captive Africans for more than 400 years. The United States Government wishes to persuade the United Nations and the world today that

African-Americans are full and equal members of America's society, enjoying inalienable rights. Its propaganda is so persuasive and effective that even some of us believe that the self-determination of the Anglo-American is our very own.

15. The Universal Declaration of Human Rights states, "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ..." America's disregard and contempt for human rights ought to be recognized by the United Nations as America has dispossessed us of our culture, religion and language and has forced assimilation upon us. Indeed it is barbarous, and it denies us the full enjoyment of freedom, justice and equality. "Whereas," according to the Universal Declaration of Human Rights, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." We therefore appeal to the persuasive powers as well as the rule of law of the United Nations and its Member States to come to our aid.

16. African-Americans have looked toward and exhausted all remedies made available by the majority Government, although, it is viewed as the oppressor. In light of the aforementioned, cannot the United Nations open a forum for African-Americans in its host country? We wish to address the question of whether we choose to reclaim or recapture our original culture, language, religion and identity, or whether we choose to assimilate into the majority culture of America. Upon this matter we have never enjoyed the freedom of choice. We petition the Commission on Human Rights for the right to make our choice within the protection of a United Nations forum. We want recognition of our choice of human rights. We want recognition of our choice of inalienable rights. We want the crime of plantation slavery and its lingering effects which was, and is still, a crime against us and against humanity, to be rectified. We believe that through a forum we can assist the United Nations in fulfilling its most noble covenant, the Universal Declaration of Human Rights, which envisages human rights "for everyone, everywhere"; at present, we are left out.

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by the World Jewish Congress (WJC),
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with the Economic and Social Council
resolution 1996/31.

[11 January 1999]

Introduction

1. The Commission on Human Rights has promoted human rights longer than any other United Nations forum. In 1948, it produced the Universal Declaration of Human Rights, the first international document guaranteeing human rights to all people. In the next 20 years, it penned the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, these early efforts provided the world with an International Bill of Human Rights.

2. In 1967, the Commission's focus shifted from drafting a visionary ideal to examining human rights violations. In the past decade it has created a number of procedures to monitor and report on human rights compliance around the world. One of the most important of these procedures is the appointment by the Commission of special rapporteurs to investigate human rights abuses globally and in specific countries. They report publicly on their findings, offer recommendations, and, in short, help to extend the shield of human rights where it is threatened.

3. The manner in which the Commission has examined human rights abuse in the Palestinian territories, however, violates principles set forth in the Charter of the United Nations. By denying Israel equal treatment, procedural fairness and appropriate due process, it breaches article 2 of the Charter of the United Nations and its insistence upon "the sovereign equality of all its members".

4. Israel is subjected to special scrutiny in three ways: a biased mandate governing the inquiry of the Special Rapporteur on the Palestinian territories occupied since 1967; the Commission's refusal to investigate all violators of human rights in the territories; and a politicized Commission agenda that unfairly spotlights alleged Israeli violations.

Mandate of the Special Rapporteur

5. Like the United Nations human rights machinery, Special Rapporteurs must be objective in their search for the root causes of human rights violations. Only without bias can an investigation recommend just, enduring solutions. Instead, the Special Rapporteur on the Palestinian territories has been given a mandate that calls for a biased, partial, and prejudiced inquiry.

6. On 19 February 1993, the Commission adopted resolution 1993/2 A entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine". It called for the appointment of a special rapporteur "to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the [Fourth] Geneva Convention ... in the Palestinian territories occupied by Israel since 1967". 1/ Furthermore, this investigation will continue "until the end of the Israeli occupation of those territories". 2/

7. The mandate of the Special Rapporteur presupposes Israel's abuses. No other country-specific Rapporteur - including those for Rwanda, Afghanistan,

Iraq, or the former Yugoslavia - has a mandate that prejudices the outcome of the investigation. No mandate assumes that a country has violated human rights before uncovering evidence.

8. In his report to the Commission at its fifty-fourth session, the Special Rapporteur on the Palestinian territories asserts "that his role is not an accusatory one". 3/ Yet, the Commission has directed the Special Rapporteur to examine "Israel's violations" in the Palestinian territories, not the problems that occur there. The Special Rapporteur, himself, later writes that "the mandate prejudices the outcome of [his] investigation". 4/

9. The Commission has appointed the Special Rapporteur to the Palestinian territories until Israel ends its occupation. The Special Rapporteur's mandate is open-ended. At designated intervals, the mandates of all other Special Rapporteurs are reviewed by the Commission. The Special Rapporteur to the Palestinian territories is the sole exception, highlighting further the prejudicial mandate under which this Special Rapporteur functions.

10. The Special Rapporteur believes his task is to "prevent violations of human rights and improve the overall human rights situation" in the area. 5/ But even if violations persist, the Special Rapporteur's investigation will end when Israel leaves the Territories. The Special Rapporteur's mandate could expire without a decline or end to human rights abuses in the Territories.

Palestinian Authority Responsibility

11. The Special Rapporteur writes that human rights concerns in Palestinian society are rooted partly in Palestinian abuses, 6/ and that one of the four reasons for Palestinian frustration is violations committed by the Palestinian Authority. 7/ Yet, the Special Rapporteur focuses almost entirely on alleged Israeli violations.

12. The Special Rapporteur's one-sided report ignores the Palestinian Authority's human rights record. Since the peace process began in 1993, Israel has transferred responsibility for 97 per cent of the Palestinian population to the Palestinian Authority. Education, health, social welfare, taxation, the judiciary, prisons, the police, and countless other necessities for daily life are under Palestinian jurisdiction.

13. Credible, independent reports issued by Human Rights Watch, Amnesty International, and the United States State Department all charge the Palestinian Authority with committing human rights violations: arbitrary detentions, unfair trials, torture, interfering with the Palestinian press, arresting and threatening human rights activists and "creating a climate of intimidation and fear", 8/ to name just a few. 9/

14. The Commission must expand the mandate of the Special Rapporteur to the Palestinian territories to include all possible sources of abuse. Restricting the Special Rapporteur's investigation to "Israel's violations" delays real solutions to urgent problems.

The Commission's agenda

15. The Commission's agenda spotlights Israel at the expense of human rights in the territories. For the past several years, the Commission has examined the "Question of the violation of human rights in the occupied Arab territories, including Palestine" as the first substantive item on its agenda. It is not discussed when the Commission considers the "Question of the violation of human rights and fundamental freedoms in any part of the world".

16. The Commission has rightfully attempted to restructure its agenda. But its new format still continues to discriminate structurally against one United Nations Member State by examining Israel apart from all other nations. Each State, including Israel, should receive equal treatment and be placed under the same agenda item for discussion.

17. Israel's prejudged human rights abuse is the only country-related matter debated separately from all other country violations. This departure from procedural fairness undermines the Commission's legitimacy in examining all human rights violations around the world.

Notes

1/ Commission on Human Rights, resolution 1993/2 A, paragraph 4 (a).

2/ Idem.

3/ Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A, E/CN.4/1998/17, paragraph 4, 19 February 1998.

4/ Ibid., paragraph 72.

5/ Ibid., paragraph 4.

6/ Ibid., paragraph 76.

7/ Ibid., paragraph 65.

8/ Palestinian Self-Rule Areas, Human Rights Watch, September 1997.

9/ Palestinian Self-Rule Areas, Human Rights Watch, September 1997. AI Report 1997: Palestinian Authority, Amnesty International, 1997. The Occupied Territories Report on Human Rights Practices for 1997, United States Department of State, 30 January 1998.



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COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 18 (b) of the provisional agenda

**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS**

Written statement submitted by Franciscans International, a
non-governmental organization in general consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[11 January 1999]

* Translation supplied by the submitting organization.

The way of acting of the public system in charge of the protection
of human rights in Mexico: the mask of impunity

1. Franciscans International and Dominicans in cooperation with the Francisco de Vitoria OP Human Rights Centre of Mexico, wish to bring to the attention of the United Nations Commission on Human Rights the situation of human rights in Mexico. Our document will focus on the role and activities of the National Commission of Human Rights of Mexico and the 32 State Commissions of Human Rights in the country. The document is based on the research and permanent work of the Francisco de Vitoria OP Human Rights Centre.

2. The National Commission of Human Rights of Mexico was created by a presidential decree in 1990 as a decentralized body of the "Secretariat de Gobernacion" (Minister of the Interior) by the Mexican Government. Two years later, the Commission was given autonomy and its own resources. Similar bodies were established in 32 federal states of Mexico.

3. Until now, the head of the National Commission on Human Rights has been appointed by the President of the Republic and the heads of the State bodies are appointed by State governors. In practice, this deprives the various bodies of the independence required to accomplish functions which are appropriate to an ombudsman. Under the present system, the appointment of the President of the Commission is made by the President of the Republic with the approval of the Senate or the Permanent Commission of Congress, if the former is not in session. It should be noted that the political party PRI (Institutional Revolutionary Party) has held a majority in the Senate for the past six decades and is also the Party in power in Mexico and there is no doubt that the decision of the Executive Branch is decisive in this matter.

4. Different bodies of civil society and of recognized political parties have taken part in consultative fora before the reform put forward by the Commission. As of January 1999, the reform initiative is still being reviewed by ad hoc Commissions of the Chamber of Deputies. It would seem evident that the reforms of article 102b of the statutes of the National Human Rights Commission represent an important step forward in strengthening the non-legal system of protection of human rights. However, the experience of NGOs with the State Commissions has shown that the formal dependence of these bodies on the Executive power of government is far from being the only problem. Since the procedures in place give priority in practice to information obtained from the authorities and also minimizes the import of complaints received, the authorities in charge for protecting human rights in Mexico have often guaranteed the impunity of the perpetrators of violations.

5. As opposed to other intergovernmental human rights bodies, the investigations conducted by the National Human Rights Commission places the burden of proof on the complainant rather than on the particular authority identified as responsible for the action. The Francisco de Vitoria Human Rights Centre in Mexico has done an inventory of cases which found against the victims because the victims could not provide other elements than those mentioned when the complaint was made.

6. Investigations conducted by the Commission are limited in most cases to requesting information from the concerned public authorities. When responses are received from them, the files are dealt with by producing documents of non-responsibility. Since the procedure does not attempt to establish the truth and the coherence of the testimonies of the complainants, many cases remain unpunished. On the other hand, the mandate of the Commission is not aimed at investigating systematically all human rights violations, but only at punishing public agents who are directly and materially responsible for the facts. The absence of any attempt to prosecute those who ordered or promote illegal acts allows the perpetrators to continue acting with impunity. This was the case in the situation of forced disappearances and arbitrary detentions linked to the insurrection and conflict in the states of Guerrero and Oaxaca.

7. The preventive measures do not benefit from an appropriate follow-up and, in many cases, there is no follow-up at all. The efficiency of such measures is so reduced causing new violations of the rights of the "protected persons" left without defence.

8. In the context of these procedures, the Commission promotes amicable conciliation to settle some cases. These cases are often resolved without the knowledge nor the agreement of the complainant. In addition the conditions of settlement are negotiated directly between the staff of the Commission and the responsible authorities (mainly when the army is involved), without the knowledge of the complainant and/or the victims or without having notified them beforehand.

9. The limitations on the Commission's right to intervene in legal proceedings prevent it from overseeing the respect of the guarantees of a fair trial, thereby leaving the accused without defence. In addition, the recommendations made by the Commission generally consist in a request for preliminary investigations. This results in those alleged responsible for the violations being set free during the trial, thereby allowing impunity to prevail.

10. As a national body, the Commission must deal with all cases concerning the federal army. Article 13 of the Commission's Statutes declares clearly that in the cases where civilians are involved, the civil authorities have the competence to judge the affair. In spite of this article, the Commission has sent to the Bureau of the Attorney-General of the Military Justice recommendations which resulted in the latter investigating crimes presumably committed by civilians rather than sending them to the Attorney-General of the Republic.

11. In addition, we are aware that the Commission has provided military authorities with detailed information on the complainants in order to facilitate the procedures. This means that the Commission has taken on the role of a simple bureau and did not conduct its own investigation. Besides the risks which this represents for the complainants, this manner of proceeding discourages and often dissuades potential complainants and/or victims, especially as they will be interrogated by their aggressors. The

major deficiencies and flaws of the Commission relate to cases involving the military. The lack of openness and the blindness which is characteristic of the army constitute a stumbling block which the ombudsman does not want to deal with. It has also on many occasions allowed total immunity, a situation which can be traced back to the silence of the public system of protection.

12. Although there are presently local commissions in all States of the Federal Republic, it is worth noting that there are considerable differences between the National commission of Human Rights and the State Commissions in terms of budget, infrastructure and human resources. The Francisco de Vitoria Human Rights Centre in Mexico has noted that there is great mistrust on the part of citizens regarding the effectiveness of the work of Commissions as there are doubts about the independence and autonomy of its members. Many irregularities have taken place and have been recognized and documented. The moral authority of the ombudsman is the only instrument to punish and prevent impunity. Regretfully, the presidency of the State Commissions is often used as a political tool or as an instrument of the Executive of State governments. This leads to considerably limiting the effectiveness of Commissions and negating the confidence which citizens have in their work. Nevertheless, public pressure which is generated by the publication of the Commissions' recommendations puts pressure on responsible authorities to implement them. However, it has been established in many instances that the Commissions frequently use their discretionary power which allows them to keep their recommendations under wrap. This prevents the full implementation of recommendations and thereby sabotages the work of the ombudsman.

13. The office of the national ombudsman is systematically used by the Government of Mexico to demonstrate to the international community the effectiveness of the protection of human rights in the country. Since this is the case, then the work of the ombudsman is far from achieving its goal. In fact, the ombudsman's role consists more in opposing the complainants by placing many obstacles before them in their quest for justice. One of the main obstacles consists in requiring complainants to provide information themselves which, in most cases, they cannot collect, rather than using his own authority and the means at his disposal to conduct investigations. Another obstacle is that amicable resolutions of cases and recommendations themselves are negotiated with those authorities responsible for the violations. Moreover, in view of the dependence of judicial power on Executive authority which flows from the political use of law which prevails in Mexico, the cases of violations of the right to a fair trial are among the most widespread. However, since the Commission does not have the possibility to know the issues of fact in legal proceedings, the Commission has no jurisdiction over the violations. Finally, there is no follow-up to the recommendations made by the National Commission on Human Rights. The Commission may consider that it has totally implemented its recommendations when it has opened preliminary investigations against the accused. However, this is not the same as demanding sanctions when illegal acts have been committed.

14. Therefore, we urge:

(a) That the United Nations Commission on Human Rights recommend to the Government of Mexico to accept the offer of technical advisory services

from the Office of the United Nations High Commissioner for Human Rights and that, as part of this, to revise the internal procedures of the National Human Rights Commission of Mexico to bring it into line with the international standards and practices of the Human Rights Committee of the United Nations which oversees the follow-up to the International Covenant on Civil and Political Rights.

(b) That the United Nations Commission on Human Rights urge the Government of Mexico to bring its legislation into line with international human rights instruments so that the classification of human rights violations and offences in Mexican law is consistent with these instruments.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which
is circulated in accordance with Economic and Social Council Resolution 1996/31.

[15 January 1999]

1. At the 1998 session, the Commission on Human Rights adopted no decision on the "Final report on the question of the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to resolution 1996/24 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities" (document E/CN.4/Sub.2/1997/8).
2. The American Association of Jurists (AAJ) is of the view that the Commission must adopt decisions on this extremely important topic at its 1999 session.
3. The AAJ and the Centre Europe-Tiers Monde (CETIM) actively cooperated with the Special Rapporteur in organizing two seminars, one in November 1996 at the United Nations Office in Geneva, and the other in April 1997 at the Universidad Carlos III in Madrid. The latter enjoyed the invaluable assistance of that university's Bartolomé de las Casas and Francisco de Vitoria Institutes. The two NGOs formulated for the Sub-Commission a series of proposals to give effect to the conclusions of the Special Rapporteur (E/CN.4/Sub.2/1997/NGO/16), some of which are reproduced below so that the Commission may take them into account.
4. At the 1999 session the Commission on Human Rights should adopt, among others, the following suggestions and recommendations relating to Mr. Guissé's final report:
 - a) That control and follow-up mechanisms for the implementation of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved by the ILO Governing Body in 1977, should be reactivated in the ILO;
 - b) That consultations should be restarted with a view to establishing codes of conduct on the transfer of technology and on multinational enterprises;
 - c) That a declaration of principles on human rights and the environment should be promoted (see the draft contained in the final report by Ms Ksentini, E/CN.4/Sub.2/1994/9);
 - d) That the code of conduct for the control of restrictive business practices should be applied and eventually improved;
 - e) That follow-up mechanisms should be created for the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191) and the International Code of Conduct for Public Officials (General Assembly resolution 51/59); for example, the regular publication of the list of private and public enterprises guilty of corruption;
 - f) That international judicial co-operation should be promoted (with precedence over bank secrecy, as decided by the Federal Tribunal of the Helvetic Confederation, Case 1A.33/1997 of 8 April 1997);
 - g) That the establishment of State and investor control of financial activities should be promoted, particularly with regard to the management of pension funds (in the latter case especially with the participation of the trade unions concerned);

h) That studies should continue on appropriate indicators to measure progress achieved with the gradual implantation of economic, social and cultural rights, until such indicators have been established;

i) That the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights should be approved subject to its relevant amendments;

j) That the Commission on Human Rights should appoint a rapporteur (as proposed by the Committee on Economic, Social and Cultural Rights) or a working group, to deal with violations of economic, social and cultural rights;

k) That a General Assembly declaration should be sought, stating that large-scale violations of economic, social and cultural rights and the abuse of economic power and international financial mechanisms to obtain disproportionate concessions, advantages or profit to the serious detriment of groups or communities (such as women, children, disabled persons, workers, consumers, populations, minorities or indigenous peoples) constitute international crimes (see the General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted under General Assembly resolution 40/34), especially articles 18 and 21 of the Declaration in Section B);

l) That the enforcement of national laws and regulations consistent with existing and proposed international norms in this field be encouraged.

5) With regard to the codes of conduct, there is a fairly developed trend that advocates that multinational enterprises should be given their own codes of conduct, enforcement of which would be monitored by non-governmental organizations. Some companies that have their own codes of conduct even hire private consultants to monitor enforcement. Some non-governmental organizations conduct campaigns and bring direct pressure to bear on particular multinational enterprises to observe labour laws (or ensure that their subcontractors treat their own workers more humanely) or to persuade them to take steps to ensure that their activities do not damage the environment. They even invite them to adopt "codes of conduct" prepared by the enterprises themselves. The "satisfecit" or certificate of good conduct that non-governmental organizations may award, and with even more reason, private consultant firms hired by the companies themselves, cannot replace democratic control by the society as a whole through the national States or by the international community through codes with a hierarchy of obligatory national and international juridical norms. Apart from the risk of deceit, collusion and corruption inherent in "self-monitoring" or private control (the stakes are enormous), there is an objective reason for the failure of such controls: firms try to maximize their profits and to be competitive and, unless forced, will do nothing that is liable to reduce their profits or make them less competitive. As George Soros explains, with the authority acquired by someone who is himself "in the belly of the whale": "If I set rules for myself without imposing them on others, my market profits will dwindle, but it will have no effect on the markets, which cannot be influenced by a single actor. It is one thing to lay down rules. It is quite another to observe them. Laying down rules implies political and collective decisions; observing them implies the individual decisions that prevail in the marketplace". "Capitalism", he goes on to say, "needs the countervailing influence of democracy."



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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the International Organization for
the Elimination of All Forms of Racial Discrimination (IAFOR),
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[20 January 1999]

1. In regard to the right of peoples to self-determination and the right to return to one's own country, we often ask ourselves the same question raised by many Jews who listen to reason and abide by human standards of fairness and justice. How can anyone logically and historically accept as law the Law of Return in Israel which permits any Jew, from anywhere in the world, to migrate to Palestine and enjoy residency and citizenship rights in Israel, whereas, this discriminatory law prohibits any Palestinian, whether Christian or Muslim, from returning to the homeland where they were born, where their parents and great-grandparents, for thousands of years?

2. How can logic and history accept a country without borders since neither its Constitution nor its laws determine where its borders begin and end, and where a defining point of its territory meets land belonging to others? There is no doubt that such an unusual and unacceptable situation conveys a dangerous and deviant meaning.

3. Israel, as everyone knows, was established as a result of a resolution adopted by the United Nations which was called at the time the "Partition Resolution". But Israel does not recognize the legally binding conditions of the very same resolution that brought it into existence in the first place! Furthermore, Israel does not recognize hundreds of other resolutions adopted by the United Nations. Unfortunately, fanatic Israeli leaders think that through their influence and organized manipulation of the media, they can continue to sabotage and ignore matters supported by documented facts and history.

4. As the distinguished British historian Arnold Toynbee noted, the Israeli State is a foreign body planted through force, violence and conspiracy in an ancient area that has its own history and triumphs, the Middle East. He further commented that natural forces determine that a foreign body either adapts itself to the new environment, or it will find itself being discarded and rejected.

5. There is no doubt that many of the highly intellectual and rational Jews realize this solid truth. Therefore, they exert tenacious efforts to get along with their neighbours and to uphold the banner of peace, and peace here and now. However, some fanatic Jews who aspire for a Greater Israel from the river to the river, as reflected in their Parliament's motto, seem to stumble as they dwell in ideologies of ethnic and racial superiority which do not foster national and international harmony and tranquillity. This fanatic trend made Israel more than once take an extreme position, as the whole world community stood on the opposite side. This indisputable reality is evident in several resolutions adopted by the Security Council and the General Assembly of the United Nations. In the short or long run, that trend will lead to the fulfilment of Toynbee's theory, because the biased support of the United States of America for Israel will not last forever. The people of the United States of America will reject this biased position, which is currently supported by the media and politicians, and will re-examine their real interests in the area. When this awareness is realized and as the people of the United States of America awaken from the media and political propaganda, sooner more likely than later, Israel will lose the long-standing and strongest source of support, on which it has relied all of these years.

6. Another important point is that no matter how powerful and resourceful Israel can be, it cannot simply swallow up and fully absorb this ancient area.

The end of the twentieth century is unlike the nineteenth century because colonization based on military force and superiority ended without the possibility of resurrection.

7. Our words reflect tens of studies founded on and supported by researched facts and examined laws presented by the members of our organization. The members of our organization specialize in different fields and come from different ethnic, national and religious backgrounds. Some of them are Jews, Christians, Muslims; among them are leftists and rightists. But all strongly condemn Israel's illegal actions and flagrant violations committed in the Middle East; confiscating Palestinian lands, building settlements, demolishing homes, uprooting trees, detaining prisoners without due process, restricting movement, etc. And one of the most flagrant violations and discriminatory factors of all is the Law of Return for Jews and not Palestinians.

8. What some of Israel's leaders sought and still seek through reaching separate agreements with one party or another in the area is a pretentious and superficial peace-seeking process that has proved damaging and harmful to all parties concerned. The negative consequences of such faint attempts are witnessed in Egypt, Jordan, and in Palestine itself. History has taught us that the pretence of peace is worse than no peace. This sham will certainly lead, in the short or long run, to a devastating war which will, eventually, not favour the Jews' own interests and welfare.

9. We conclude with a great lesson from the leader of the leaders of history who once said to his follows, "Stand by your brother, whether he is the oppressed or the oppressor". His followers replied, "We stand by him when oppressed, that is his right which we will respect and provide, but why and how can we stand by him when he is the oppressor?" He answered, "You do so through standing by him against his oppression, forbidding him from proceeding further into it".

10. Will the human rights community, Member States, intergovernmental agencies and non-governmental organizations be able to make a stand to save Israel from itself and to prevent Israel's fanatics from committing further atrocities and brutality in the Middle East? The more rational Jewish activists in Palestine are in much need of our support and solidarity.

11. On television a young Israeli peace activist was crying the day Benjamin Netanyahu won the election. The tears of that young peace activist will stay in the memory of several people and viewers. Will we ever wipe 50 years of tears off the face of Palestine? That young Israeli peace activist represents 50 per cent of the Jewish population in Palestine. The international community can make it 80 per cent or more by standing together and working jointly against the wild ambition of the fanatic Jews and their followers.

12. We should not deceive ourselves or bury our heads in the sand, ignoring the glaring fact which confirms that there is no solution to this tragedy other than the establishment of a democratic non-sectarian State in which Jews, Christians and Muslims will cooperate and which will be the foundation of peace in the world.



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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Federation of Associations for
the Defence and Promotion of Human Rights, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[20 January 1999]

Implementation of the peace plan for Western Sahara: stage of
referendum on self-determination and human rights situation

1. In 1975 just at the end of General Franco's dictatorship, Spain abandoned the last of its colonies: the territory of Western Sahara. That same year, Morocco invaded the territory. The vacuum created by Spain's withdrawal resulted in war between the Frente POLISARIO - which, representing the Saharawis, claims the right of the people of Western Sahara to self-determination according to international law in force - and their new colonizers. The Madrid Accords of 1975 turned Western Sahara over to Morocco and Mauritania - a country that would renounce its claims to the area - in a transfer that was clearly null and void as a matter of law. The war between the Frente POLISARIO and Morocco lasted until the ceasefire of 1991, when the United Nations agreed to create a peace-keeping mission, the United Nations Mission for the Referendum in Western Sahara (MINURSO), to hold the referendum Spain was supposed to hold in 1975.

2. The referendum for the self-determination of the people of Western Sahara, which was adopted by the United Nations as a peaceful solution to the Western Sahara decolonization conflict, was scheduled for 1992, but it was postponed until it was suspended in 1996. The Houston agreements, reached between the parties in September 1997 under the auspices of the Personal Envoy of the United Nations Secretary-General, Mr. James A. Baker, reactivated the process.

3. The Houston accords made it possible for the Frente POLISARIO and the Government of Morocco to reach agreement on the central issue of the procedures for constituting the electoral body, on the question of the confinement of the troops, the repatriation of the refugees, the release of political prisoners and the exchange of prisoners of war and also produced a code of conduct for the referendum, all of which, if implemented in good faith, could lead to a just and fair referendum. In the light of the advancements favoured by the Houston agreements the referendum was then scheduled for 7 December 1998.

4. However, the obstructionist attitude held by the occupant country, Morocco, has led once more to a new delay in the holding of the referendum and thus the United Nations Security Council in its resolution 1204 (1998) of 30 October 1998, taking into account the proposals contained in the Secretary-General's report S/1998/997, dated 26 October 1998, postponed the holding of the referendum until December 1999. The Secretary-General came up with a series of recommendations that were welcomed by the Security Council in the above-mentioned resolution, among them:

(a) To resume without delay identification of those applicants from tribal groupings H41, H61 and J51/52 (there is a controversy between the authorities of Western Sahara and Morocco on these tribes. It is a question of 65,000 persons of dubious credentials, people from tribes only marginally related to Western Sahara. The Government of Morocco is pushing for them to be allowed to vote) who wish to present themselves individually, and at the same time to begin the appeals process, as the best means of moving forward in the implementation of the Settlement Plan;

(b) In order to avoid the indefinite extension of the Identification Commission's programme of work, the Secretary-General proposed to publish by 1 December 1998 the provisional list of voters resulting from the work of the Identification Commission on tribes other than tribal groupings H41, H61 and J51/52, so as to begin on that date the appeals process concerning tribes which have already been identified. This appeals process could conclude in March 1999. However, given the obstacles brought about by Morocco, Mr. Kofi Annan has abandoned his intentions of publishing the provisional voters' list on 1 December;

(c) The number of the Commission's members will be gradually increased from 18 to 25;

(d) The holding of the referendum will also depend on the measures taken in anticipation of the return of refugees who have been declared eligible to vote, together with their immediate family members, and the conditions in which that repatriation takes place. To this end "the presence and establishment of UNHCR in the territory must be formalized in the very near future. That is a major requirement if we wish to create a real climate of confidence among the refugees";

(e) According to the new schedule, the transition period will begin in June-July 1999; the referendum should be held in December 1999. The full deployment by MINURSO should be effective on 1 January 1999;

(f) Accordingly, the Secretary-General asked the Security Council to extend the mandate of MINURSO to 30 April 1999. (In relation to this, the Security Council in its latest resolution on the subject (1215 (1998) of 17 December 1998) extended the mandate of MINURSO until 31 January 1999.)

5. The most recent United Nations documents on the question of Western Sahara, the report of the Secretary-General S/1998/1160 of 11 December 1998 and the above-mentioned Security Council resolution 1215 (1998) of 17 December 1998, have made it clear that the Frente POLISARIO has officially accepted all of the proposed measures (see S/1998/997) and that Morocco for its part has expressed its "concerns regarding key provisions" of the proposed package.

6. The dilatory manoeuvres of the Government of Morocco have resulted in the identification of 65,000 more persons of Moroccan origin, in full contradiction of the Security Council's decision that the electoral body for the referendum would be determined on the basis of an update of the 1974 Spanish census. This new attempt on the part of Morocco to legitimate its illegal occupation of the territory has provoked a new delay of one year in the holding of the referendum.

7. The Moroccan strategy aimed at preventing the Saharawi people from expressing its desire for freedom and self-determination and its legitimate aspirations to dignity and justice, makes use of a series of practices that violate human rights and that are perpetrated to a large extent by the occupant army: the use of napalm and phosphorus bombs, extrajudicial and summary executions, forced disappearances, torture, widespread repression,

unfair trials, a state of siege, an information blockade and also a policy of population transfer (settlers) in order to denaturalize the demographic composition of the territory.

8. In the light of all this, the signing organizations would like to express their concern at and rejection of the human rights violations, starting with that of the right to self-determination, to which the Saharawis are being subjected as individuals and as a people, and would also like to draw attention to the following facts:

(a) MINURSO has been able to comply with most of its assignment having already identified up to 147,000 persons (twice the number of persons in the Spanish census) who, pursuant to the Houston accords had to be summoned by the Identification Commission; however, thousands of Saharawi emigrants whose situation has not yet been regularized and who live mainly in Spain and France have been left aside in this identification process; these Saharawis have not had any access to the Identification Commission; if the current situation is maintained they will not be able to exercise their right to vote;

(b) Regarding freedom of movement and the possibility of gaining access to the occupied territory, the Government of Morocco restricts free access, preventing it from being visited by personalities and diplomats. On 26 May 1998, Morocco forbade the utilization of the MINURSO aircraft for the transportation of diplomats, officials of non-governmental organizations and journalists, which became the central point of a letter that the Special Representative of the Secretary-General, Mr. Charles F. Dunbar, sent to the Government of Morocco, asserting that the visit of the persons concerned was within the framework of the activities of the Mission and of the United Nations and would contribute to the transparency of the process. However, Morocco has not changed its position. The restrictions imposed by Morocco on the freedom of movement adversely affect the transparency of the process and put in danger the results of the referendum. It is quite disturbing that Morocco manages to impose such practices on the United Nations. Therefore we would like to express our disapproval of the lack of guarantees to the Saharawi population of freedom of expression and movement and exercise of its inalienable right to self-determination and independence, in accordance with the principles of the Charter of the United Nations and with General Assembly resolution 1514 (XV) of 14 December 1960, which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples;

(c) With respect to the repatriation of Saharawi refugees, Morocco has refused to provide the civilian police of MINURSO with the relevant information to permit their return in safe conditions.

9. At the same time, since the beginning of the conflict in 1973 all parties involved have placed mines all over the territory. In this respect, the scant Moroccan cooperation with the mine-clearance units has also been verified. It even confiscated for several months in El Ayoun airport the communication equipment of the units of Sweden and Pakistan. As a consequence, according to a recent MINURSO report, the Mission was not able to accomplish its task by the end of October 1998, as had been anticipated.

10. We therefore we express our deep concern that the demining is only partial and that mines would only be removed from some gaps in the Moroccan defence walls and from zones in which the Saharawi refugees have sought shelter, thus entailing a permanent danger and a psychological pressure for the participants in the referendum. It should also be taken into account that the singular nature of the terrain, marked out by a series of dunes, does not guarantee that the cleared zones will be thoroughly safe.

11. The Moroccan security forces continue to commit serious violations of human rights in the occupied territories of Western Sahara, thus acting against international treaties signed by the Kingdom of Morocco, in spite of the presence of the United Nations in the territory since 1991. These violations result in violent repression of the whole of the civil Saharawi population, which is being subjected to a restrictive apparatus composed of more than 250,000 Moroccan agents. In spite of the presence of MINURSO, assassinations, arbitrary detentions, torture and penalties that violate the provisions of due process persist.

12. There is no news about the hundreds of disappeared persons and political prisoners. The efforts of the United Nations independent jurist for the release of the Saharawi prisoners, Mr. Emanuel Roucouas, have not yet had any positive results given the refusal of Morocco to recognize the hundreds of cases of disappeared.

13. Currently, the Moroccan absolutist monarchy is developing a clean image campaign mainly based on King Hassan's idea of putting an end to the human rights violations and promoting the opening up of his Government. The Human Rights Advisory Council, which has been created by the King to serve that image, announced the release of 28 political prisoners and the recognition of the death of 70 Moroccans who disappeared in the 1960s and 1970s. But the reality is that the dossier has just been opened and the issue of the hundreds of Saharawi prisoners and disappeared is still taboo. As an example, Abraham Serfaty, a Moroccan citizen who is in favour of the self-determination of the Saharawi people, has not been granted the right to return. Also, 85 Moroccan prisoners of war freed by the Frente POLISARIO have not been able to return to their land owing to the refusal of Morocco to recognize the existence of prisoners of war.

14. In view of these facts we wish to call attention to the following:

(a) The need for the hundreds of Saharawi disappeared and their families, including Mohamed Basiri whose case is under the responsibility of the Government of Spain, to achieve their right to truth, justice and redress and for the victims of torture and other cruel, inhuman or degrading treatment or punishment to be compensated also. Respect for the victims' rights requires the authors of these violations to be identified and brought to trial in order to determine their responsibility and impose upon them the sanctions provided for by law;

(b) The fact that the creation of a climate of trust and serenity for the development of a free referendum and respect for the international human rights instruments and international humanitarian law require the release of all the Saharawi prisoners and disappeared, the creation of an independent

commission to conduct a thorough investigation into the serious human rights violations carried out by the parties to the conflict and to prosecute the authors of these violations;

(c) We consider, given that the various restrictive bodies continue to function, that the guarantee of a free referendum also implies withdrawal of the services and bodies of the Moroccan State responsible for serious human rights violations in Western Sahara, particularly the Moroccan Army, the Territory Security Directorate (DST), the Judicial Police (PJ), the Royal Gendarmerie and the Mobile Intervention Companies (CMI). These bodies are thought to have been responsible for more than 90 per cent of the detentions carried out in Western Sahara;

(d) We also consider reprehensible the passive attitude of the international community, and especially of Spain given its historical responsibility towards the Saharawi people; we would like to underline that the only possible way to achieve peace and security in Western Sahara is the prompt holding of the referendum on self-determination. Spain should actively promote the holding of the referendum, even if this former colonial country has to take into account the active opposition of Morocco. Until now, MINURSO has not counted with any Spanish component, nor has the Government of Spain shown any resolute interest in sending qualified observers to the area;

(e) During his recent visit to the region, between 30 November and 2 December 1998, the United Nations Secretary-General confirmed that the Frente POLISARIO clearly accepts the peace plan (see S/1998/1160 of 11 December 1998), which means that the only obstacle preventing the Saharawi people from fully enjoying its right to self-determination, in accordance with international law, comes from the Kingdom of Morocco, which persists in blocking the efforts of the international community to arrive at a peaceful and lasting solution.

15. The signing organizations urgently appeal to the international community, in particular the European Union, to direct the necessary pressures towards the Kingdom of Morocco in order to contribute decisively to the fulfilment of the accords.



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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA
AND ALL FORMS OF DISCRIMINATION**

**Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status**

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[22 January 1999]

GE.99-10678 (E)

1. Human Rights Watch is concerned about the racial impact of felony disenfranchisement laws in the United States. These laws deny 1.4 million black Americans the right to vote. The laws denying them the franchise are unreasonable and racially discriminatory under international human rights law.
2. In most of the United States, conviction of a felony strips the offender of the right to vote while he or she is in prison, or on probation or parole. In addition, one quarter of the States disenfranchise ex-offenders who have served their sentences. Few of these ex-offenders have the knowledge, or financial or political resources needed to regain the vote, for example by securing an order from the State governor or a presidential pardon; they remain disenfranchised for life.
3. Criminal disenfranchisement in the United States is not imposed by order of a judge as part of a criminal sentence. It is a collateral consequence of conviction that occurs automatically and administratively. Conviction of any crime that is punishable with imprisonment is a basis for losing the right to vote. The crime need not be notably serious nor have any connection to electoral or political processes or the security of the State. Shoplifting or possession of a modest amount of marijuana suffice.
4. State disenfranchisement laws have a dramatically disproportionate racial impact. Black Americans constitute more than one third of the 3.9 million Americans who cannot vote because of felony convictions. Nationwide, 13 per cent of black Americans are disenfranchised - a rate of disenfranchisement that is seven times the national average. These national figures mask wide disparities among the States. Ten States disenfranchise more than one in five black men. In two States, 31 per cent of all black men are disenfranchised. If current trends continue, 3 in 10 black men nationwide will be disenfranchised. In States that disenfranchise ex-felons, Human Rights Watch estimates that 40 per cent of the next generation of black men is likely to be disenfranchised for life.
5. The right to vote is a fundamental cornerstone of democracy and is recognized as such by United States law. However, the United States Supreme Court has ruled that the nation's Constitution permits criminal disenfranchisement unless it has been racially motivated. In some States, disenfranchisement laws were, in fact, enacted with the express purpose of excluding as many blacks as possible from the vote. In most States, however, the racially disparate impact is not the intent but merely the effect of the laws. It reflects the grossly disproportionate impact on black Americans of criminal justice policies in the United States, including anti-drug activities that have heavily focused on poor inner-city neighbourhoods with predominantly black populations. Black men in the United States, for example, are imprisoned at a rate that is 8.5 times greater than that for white men.
6. Article 25 of the International Covenant on Civil and Political Rights (ICCPR), provides that every citizen has the right to vote and that right may not be subject to discrimination or to "unreasonable restrictions". The Human Rights Committee has affirmed in its General Comment 25 that article 25 "lies at the core of democratic government based on the consent of the people" and that restrictions on the right to vote should only be based on grounds that are "objective and reasonable". Acknowledging the existence of criminal

disenfranchisement laws, the Committee has stated that "[i]f conviction for an offence is the basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence".

7. The United States may have the world's most restrictive criminal disenfranchisement laws. Some countries condition disenfranchisement of prisoners on the seriousness of the crime or the length of their sentence, while other countries simply permit all prisoners to vote. We know of only one other country in addition to the United States in which a person convicted of any crime remains disenfranchised after release from prison. In at least one country, the law obliges prison authorities to encourage prisoners to assert their voting rights. A few countries restrict the vote for a short period after conclusion of the prison term, for example in the case of persons convicted of buying or selling votes or of corrupt practices.

8. There is little doubt that United States State laws denying the vote to all ex-convicts regardless of the nature of their crime or the severity of their sentences are unreasonable. In the United States an 18-year-old first-time offender convicted of writing a bad cheque who receives a non-prison sentence can lose the right to vote for life. Depriving citizens of a political right should only be undertaken for compelling reasons and only to the extent necessary to further those interests. But there are no such compelling interests being served. These disenfranchisement laws reflect an outdated view that voting is a privilege, not a right possessed by all. Ex-offenders have paid their debt to society; they are affected by the actions of government as any other citizen and should be able to participate in governmental decision-making. Moreover, denying ex-offenders the right to vote impedes rehabilitation and the effort to convert former felons into law-abiding and productive citizens.

9. The practice in the United States of taking the vote from convicted offenders while they are on probation, parole or in prison is also suspect. The vote is lost regardless of whether the crime they were convicted of is serious, and without participation by a judge. Given that incarcerated offenders suffer the grievous loss of liberty, it is difficult to discern a State's interest in inflicting even more punishment by depriving offenders of another basic right - that of suffrage.

10. The racially disproportionate impact of disenfranchisement laws in the United States is also inconsistent with the principles of non-discrimination contained in the International Covenant on Civil and Political Rights, article 25 of which specifically prohibits racial discrimination with regard to electoral rights, and in the International Convention on the Elimination of All Forms of Racial Discrimination, which requires States parties to guarantee, without distinction as to race, colour or national or ethnic origin, "[p]olitical rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage". United States criminal disenfranchisement laws appear to be precisely the kind of laws condemned by these two instruments: they unnecessarily and unjustifiably create significant racial disparities in the curtailment of an important right.

Caste violence in India

11. Caste-related violence continued to be a serious problem in India in 1998. In its investigation of this issue, Human Rights Watch concluded that despite promises to address longstanding concerns about violence and discrimination against low-caste "untouchable" Dalit groups, the Government made no progress in either investigating caste-related abuse or in implementing laws designed to curb it. Many of the incidents involved efforts by middle- and higher-caste groups to suppress Dalit movements demanding land reform or payment of minimum wages. Dalit women were singled out in attacks and were frequently raped. In Bihar, the Ranvir Sena, a private militia controlled by high-caste landlords, was responsible for murdering at least 58 people on 1 December 1997; to this day no militia members have been arrested.

12. Caste clashes in the State of Tamil Nadu in February 1998 involved the local police. On 26 February in Gundupatti, over 100 police, together with four truckloads of unidentified men, attacked Dalits and bonded labourers in Kookal Panchayat, a remote area of the Kodaikanal hills. According to a local human rights organization, women were kicked and beaten, property was looted and destroyed, and children and elderly persons were assaulted. The attack was apparently in retaliation for a decision made by villagers to boycott national elections.

13. In the Kurnool district in Andhra Pradesh as many as 30 low-caste villagers were killed in the early morning hours of 16 July 1998. The victims were hacked to death and their bodies were thrown into a house which was then set on fire. At least 100 other houses were burned to the ground. High-caste villagers were believed to be responsible for carrying out the massacre, in apparent retaliation for the murder of a high-caste community leader by members of the People's War Group (PWG), a Marxist organization that has advocated the use of violence to achieve land reform. Many Dalits in the area supported the PWG, and most of those killed belonged to Dalit communities. The local police did not appear on the scene for more than 10 hours after the massacre. Dalit villagers told local human rights investigators that many of their attackers appeared to have police protection.

14. Incidents such as these, and all acts of violence and discrimination against Dalits, are clearly outlawed by India's Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which the Government has failed to enforce. They are also in violation of India's obligations as a party to the International Covenant on Civil and Political Rights. The Committee on the Elimination of Racial Discrimination (CERD), when it last reviewed a report submitted by India on compliance with the Convention, raised serious concerns about the caste situation in India and in its concluding observations urged the Government to take specific measures aimed at ending caste-related abuses.

15. Human Rights Watch urges the Commission to call on the Government of India to take immediate steps to prevent and eliminate caste-based violence and bring current practices into compliance with national and international law.



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[22 January 1999]

Algeria

1. As the endemic violence in Algeria enters its eighth year, human rights abuses persist at an appalling level. Armed groups calling themselves "Islamic" continue to slaughter men, women and children, and to abduct and rape women. The Government has failed to take effective measures to halt these attacks or to curtail the abuses for which its own security forces and allied civilian "self-defence" groups are responsible. Altogether, an estimated 70,000 Algerians have died in the strife since 1992, more than 3,000 have "disappeared", and thousands more have been tortured while in custody.

2. Despite the gravity of the situation, the Government of Algeria has drastically restricted the possibility of collecting and disseminating information pertaining to the human rights crisis. The authorities have dispensed information about the violence and its victims that is sparse and misleading, censored press coverage of security incidents and refused access to the country to the Special Rapporteurs on torture and on extrajudicial executions, and to international human rights organizations. None of the international delegations permitted to visit Algeria during 1998 had the mandate or the means to conduct fact-finding of any kind into the human rights situation. The Algerian security forces, the armed civilian militia and the perpetrators of the mass killings, abductions and rapes act in a climate of impunity nurtured by the tight control over information, as well as the seven-year-old state of emergency and regressive legislation enacted since 1992.

3. Algeria has reneged on promises made earlier to cooperate fully with all United Nations human rights mechanisms. The Commission must meet its responsibility by naming a special rapporteur on the human rights situation in Algeria.

China

4. Human Rights Watch welcomes the September 1998 visit to China and Tibet by United Nations High Commissioner for Human Rights Mrs. Mary Robinson and the signing by China on 5 October 1998 of the International Covenant on Political and Civil Rights. It notes, however, that violations of human rights in China and Tibet have escalated since.

5. Freedom of association is under renewed attack. On 25 October 1998, China promulgated new "Regulations on the Registration and Management of Social Groups" which severely curtail the ability of citizens to form any kind of organization not sponsored by the Government. It has also made clear that no opposition political parties will be permitted. In December 1998 three leaders of the China Democracy Party were sentenced to prison terms of 13, 12 and 11 years in unfair and summary trials. Other party members await trial.

6. The freedom to receive and transmit information across frontiers came also under increased attack. Zhang Shanguang was sentenced on 27 December 1998 to a 10-year term for giving Radio Free Asia information about peasant protests. Lin Hai, a software engineer, was tried in Shanghai in December 1998 for distributing Chinese e-mail addresses to a pro-democracy group in Washington, D.C. He has not been sentenced as of the time of

writing. Fang Jue, a former government official who advocated political reform and whose opinions were circulated abroad has been in incommunicado detention since July 1998.

7. In Tibet, at least 10 prisoners reportedly died and many more were severely beaten during a May 1998 protest at the time of a visit by a European Union delegation. At least two monks from Drepung Monastery were arrested for allegedly preparing a protest letter to give to the High Commissioner. Gendun Choekyi Nyima, the nine-year old recognized four years ago by Dalai Lama as the reincarnation of the Panchen Lama, is still missing. The High Commissioner was denied access to him. Monks continue to be arrested for resisting political re-education.

8. In the light of systemic and institutionalized violations of human rights, Human Rights Watch calls on the Commission to cite these violations and urge improvements in China's human rights practices.

Colombia

9. The civilian toll in Colombia's war remained unacceptably high in 1998. Both guerrillas and paramilitaries, the latter often working with the acquiescence or open support of the security forces, launched offensives that resulted in civilian casualties, the destruction of civilian dwellings and infrastructure, and massive forced displacement. Efforts to pass crucial human rights legislation stalled in Congress, including a military penal code reform and a bill criminalizing forced disappearances.

10. In cases where a perpetrator was suspected, 73 per cent of civilian killings were attributed to paramilitaries, 17 per cent were attributed to guerrillas, and 10 per cent to State agents. At the root of abuses by the Colombian army was its consistent and pervasive failure to enforce human rights standards and distinguish civilians from combatants. Throughout the year, paramilitary threats of massacres were ignored by the security forces, which took few measures to protect civilians. Impunity remained the rule for officers who violated human rights.

11. Guerrillas also committed serious abuses in 1998. When the Revolutionary Armed Forces of Colombia (FARC) perceived a political advantage, it emphasized its respect for the laws of war. However, when no political advantage was apparent, the FARC made little if any attempt to abide by these standards. The Camilist Union-National Liberation Army (UC-ELN) routinely executed soldiers and police officers taken hors de combat, often in front of dozens of witnesses.

Democratic Republic of the Congo

12. In early August 1998 another war of "liberation" broke out in the Democratic Republic of the Congo. Civilians bore the brunt of the conflict as both sides resorted to extrajudicial executions and arbitrary detentions, with their perceived ethnic or political adversaries the main victims.

13. President Kabila accused ethnic Tutsis collectively of supporting an aggression on his country. Other officials resorted to hate propaganda

against Tutsis. In the capital and other government-held areas the police and the army arrested and arbitrarily detained hundreds of civilians in connection with the conflict, most of them ethnic Tutsis. New human rights problems have emerged as a result of military operations by the Congolese Armed Forces (FAC) and their military allies, principally the Angolan, Zimbabwean and Namibian militaries.

14. Rebels from the Congolese Rally for Democracy (CRD) also targeted civilians. In efforts to combat Interahamwe and Mai-Mai insurgencies and to exert political control over opposition voices, the Congolese military and their allies - the Rwanda, Ugandan and Burundian militaries - have committed a range of abuses against Congolese civilians from almost all major ethnic groups in the east, including extrajudicial killings, arbitrary arrests and detentions, disappearances, harassment of human rights defenders, abuses against women and recruitment of child soldiers.

15. All parties to the conflict subjected prisoners detained in connection with the conflict to ill-treatment and extrajudicial executions. When a rebel attack on the capital was pushed back in August 1998, soldiers and angry mobs summarily executed dozens of captured or suspected rebels. In late August retreating government soldiers reportedly killed dozens of detained civilians in the town of Kisangani. In reprisal for the killing of six of their colleagues near Bukavu in August, rebel soldiers rounded up and summarily executed hundreds of villagers including six priests and nuns, in the locality of Kasika and surrounding villages. In similar reprisals, hundreds more civilians were killed by rebels in Makobola village in late December 1998.

16. Human Rights Watch calls on the Commission to renew the mandate of the Special Rapporteur, who has been formally invited by the Government to return to the country after two years of obstruction.

Territory of the former Yugoslavia

17. In the former Yugoslavia, the past year has seen renewed armed conflict; continued widespread ethnic discrimination and ethnically motivated violence; persistent barriers to the return of refugees and displaced persons; serious restrictions on civil society; and, specifically in Croatia, the Federal Republic of Yugoslavia (FRY), and the Republika Srpska, continued non-cooperation with the International Criminal Tribunal for the former Yugoslavia.

18. A serious problem of displacement continues to plague Croatia, and Bosnia and Herzegovina. In Croatia, although the security situation has improved, Serbs continue to face prohibitive legal and administrative discrimination when trying to obtain housing, employment, documents and pensions necessary for sustainable return. In Bosnia and Herzegovina, these obstacles are coupled with ongoing ethnically motivated violence, exacerbated by the impunity its perpetrators enjoy.

19. The long-term consequences of human rights abuses have in the past year been revealed in FRY, where the Government's ten-year campaign of repression against ethnic Albanians in Kosovo has erupted into full-scale ethnic conflict between FRY government forces and the Kosovo Liberation Army (KLA). A

government crackdown on the rebel movement began in late February 1998, reaching its height in late September just before United States government representatives brokered a fragile ceasefire to avert an impending humanitarian crisis during the winter months. At the time of writing, a return to full-scale conflict appears likely in the spring, if not sooner.

20. During the conflict, government forces attacked civilians, systematically destroyed towns, and forced thousands of people to flee their homes. An estimated 2,000 have been killed in the course of the conflict, approximately 1,800 of them ethnic Albanians. The majority of those killed and injured have been civilians.

21. As of December 1998, at least 1,200 ethnic Albanians had been charged with "terrorism" or "anti-State activities" and as many as 1,500 were believed to be in custody, where physical abuse and torture is widespread. Defendants facing these politically motivated charges rarely obtain a fair trial.

22. Albeit on a lesser scale, the KLA has also committed serious violations of international humanitarian law, including the taking of hostages and extrajudicial executions.

23. While conflict raged in Kosovo, the FRY authorities took aggressive steps to suppress Serbian opposition and civil society - purging universities of those not aligned with the ruling parties, maintaining tight control over State media and, through a series of arbitrary decrees and laws, severely restricting the work of the independent media.

24. Human Rights Watch calls on the Commission to condemn the policies and practices outlined above and to renew the mandate of its Special Rapporteur vigorously to monitor human rights conditions throughout the territory of the former Yugoslavia.



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CIVIL AND POLITICAL RIGHTS

**Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status**

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[22 January 1999]

Afghanistan

1. Human rights violations in Afghanistan have continued in 1998 on a massive scale. In August, the Taliban, who control most of the country, massacred thousands of civilians, belonging principally to the Shi'a Hazara minority. Afghans living in other Taliban-controlled areas continued to suffer under repressive policies that permit no freedom of association or freedom of expression. With few exceptions, women have not been permitted to work and girls have not been allowed to go to school. Women and men caught violating dress code requirements have been beaten. As a consequence of restrictions on their freedom of movement, women have sometimes been unable to seek medical care. Civilians in areas controlled by the opposition have also been subject to abuses, including extrajudicial killing, rape and arbitrary detention. Large numbers of civilians on both sides have been killed in aerial bombardments and rocket attacks. All parties have tortured and summarily executed prisoners.

Brazil

2. Police killings of civilians, either by excessive use of force or extrajudicial execution, remained a serious problem in Brazil in 1998, especially in the city of Rio de Janeiro. Violence by death squads, with active police participation, continued to claim lives in the states of Acre and Mato Grosso do Sul. Throughout 1998, the police continued to use torture as a routine method of investigation. Particularly notorious for their use of torture were police lock-ups in Belo Horizonte, Minas Gerais. In that city's Thefts and Robberies Precinct, detainees provided Human Rights Watch with detailed accounts of daily torture sessions with electric shocks and near-drownings in a special room adjacent to holding cells.

Egypt

3. The use of torture by police and security forces has reached staggering proportions. Egyptians continue to fall victim to abuse at the hands of State agents irrespective of gender, age, religious belief or political orientation. Torture is routinely employed to obtain information and coerce confessions in cases ranging from ordinary criminal matters to egregious acts of political violence. Despite numerous calls by Egyptian and international human rights defenders, and by the Committee against Torture, the Government has failed to take any meaningful steps to halt this widespread practice. Torturers, whether they work in local police stations or in State Security Investigation offices in large cities, enjoy impunity. The Special Rapporteur on torture should conduct a fact-finding visit to Egypt. The Commission should urge Egypt to implement promptly the May 1996 recommendations of the Committee against Torture.

Indonesia

4. The resignation of President Soeharto in May 1998 initially offered some hope that the human rights situation would change for the better and, indeed, dozens of long-term political prisoners were released and many controls on freedom of association and freedom of expression were lifted. But the Habibie

Government has not seriously pursued investigations into human rights abuses by senior army officers, including Soeharto's son-in-law, Prabowo, nor has it pursued investigations into allegations that many of the outbreaks of communal violence that have wracked the country since May 1998 have been provoked. The recommendations of a fact-finding mission into riots in Jakarta in May 1998 that left more than 1,200 dead have not been implemented. The Government continues to rely on the army rather than the police for arrest, detention and interrogation of suspects, particularly in Aceh, Irian Jaya and East Timor, even though this practice frequently results in human rights violations, including torture. The ratification by Indonesia of the Convention against Torture is welcome, but the Convention now needs to be systematically enforced.

Israel

5. Torture and ill-treatment of Palestinians during interrogation by the General Security Services (GSS) is widespread and systematic. Israeli courts consistently reject individual appeals to stop interrogation practices violating the Convention against Torture, and the Supreme Court has repeatedly delayed ruling on whether these practices violate Israeli law. The Knesset is considering legislation codifying GSS interrogation practices in law, effectively legalizing torture. "Administrative detainees" can be held indefinitely without charge, trial or effective judicial review. In November 1997, the Supreme Court ruled that individuals not themselves a threat to the State could be detained administratively as "bargaining chips", i.e., hostages, for future negotiations. As of 7 January 1999, Israel held almost 80 administrative detainees, some of whom had been held for more than five years. The Commission should call on Israel to end immediately the practice of torture, detention without effective judicial review, and detention as hostages; to amend its domestic law to be consistent with the Convention against Torture; and to make public GSS interrogation guidelines.

Mexico

6. On 22 December 1997, pro-government armed civilians massacred 45 people in Acteal, state of Chiapas, following a string of attacks between supporters of the Government and of the Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional (EZLN)). During the massacre, state security police in Acteal did nothing to impede the bloodshed. Nonetheless, the federal Government subsequently assumed jurisdiction of the case, acting swiftly to investigate and detain the material authors.

7. In many other parts of the country, torture and illegal arrests continued to take place in incidents related to counterinsurgency, drugs and common crime. Institutional safeguards designed to protect detainees from torture or to prosecute those responsible for abuses routinely failed.

8. The Mexican armed forces continued to engage in abusive practices. After a soldier's weapon was stolen in Jalisco state, elite troops arbitrarily detained and tortured some 20 people on 14 and 15 December 1997, killing one person. Army troops also appear to have extrajudicially executed some of

the 11 people killed in a clash with guerrillas of the Popular Revolutionary Army of the Insurgent People (Ejército Popular Revolucionario del Pueblo Insurgente (ERPI)) in Guerrero state on 7 June 1998.

Nigeria

9. The Government of General Abdulsalami Abubakar has significantly improved respect for civil and political rights in Nigeria since he became head of State in June 1998. Most high-profile civilian political prisoners have been released, harassment of human rights and pro-democracy activists and journalists has greatly reduced, and respect for freedom of association, assembly and expression has increased. General Abubakar has instituted a new transition programme, which is due to result in the installation of an elected civilian government and the departure of the military from government at the end of May 1999. Nevertheless, there remain significant concerns, including the continued detention of individuals convicted before tribunals that did not respect due process standards, the failure to repeal decrees allowing detention without trial, and problems in the administration of the transition programme. Human Rights Watch is particularly concerned at the security crackdown in the Niger Delta region since the new year weekend, including reports that at least 125 and possibly many more Ijaw youths have been killed, some of them summarily executed, by soldiers deployed in Kaiama, Bayelsa state, and other communities in the Delta. In the light of these reports and the many other concerns in Nigeria related to respect for human rights and the rule of law, Human Rights Watch calls on the Commission to renew the mandate of the Special Rapporteur on the situation of human rights in Nigeria for another year.

Peru

10. The Government of President Alberto Fujimori continued to undermine the rule of law and the independence of the judiciary in 1998, as well as impeding the exercise of political rights. A series of presidential decrees permitted the use of military courts to try civilians accused of common crimes, and systematically restricted suspects' due process rights. Members of the National Police apparently tortured to death a common crime suspect, Willi Llerena Macedo, in Pucallpa, Ucayali department, in February 1998. Progressive limitations imposed by the executive branch on the National Magistrates Council (Consejo de la Magistratura Nacional (CNM)), an autonomous body established under the Constitution to appoint and dismiss judges and prosecutors, prompted its members to resign en masse in March.

11. Political opponents of the Government, and independent journalists continued to face persistent harassment, allegedly from the National Intelligence Service (Servicio de Inteligencia Nacional (SIN)).

United States

12. Human Rights Watch is concerned at the continued reports of sexual assault, custodial sexual misconduct and retaliation, including verbal harassment, threats, abusive pat frisks, as well as being falsely written up on rule violations resulting in extended periods of punitive segregation with

loss of privileges, used against women prisoners by guards in Michigan prisons. Despite the claim by the State of Michigan that it has a zero tolerance policy towards sexual abuse, the Governor denied the Special Rapporteur on violence against women access to the prisons in 1998 to investigate complaints. Furthermore, guards reportedly retaliated against women plaintiffs in a law suit alleging widespread sexual abuse and privacy violations. Human Rights Watch receives reports of sexual abuse by guards in jails and state and federal prisons throughout the United States and is concerned at the failure of the federal Government to monitor state compliance with human rights standards and to remedy violations at the state and federal level.



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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[22 January 1999]

1. In December 1998, the General Assembly adopted the Declaration on Human Rights Defenders prepared by the Commission on Human Rights. This is an important and welcome step, but events of the past year only highlight the need for urgent and full implementation of the Declaration and prompt and effective protection for human rights defenders worldwide, including decriminalization of human rights monitoring in countries where citizens are denied this basic right. Below, Human Rights Watch calls the attention of the Commission to the situation of human rights defenders in a few countries.

Colombia

2. Defending human rights remained a dangerous profession in Colombia. In 1998, at least five human rights defenders were murdered, among them government investigators charged with investigating complaints about rights abuses. Among the most dangerous areas in the country for human rights work was Antioquia. On 27 February 1998, three assassins gunned down human rights lawyer Jesús María Valle Jaramillo, president of the "Héctor Abad Gómez" Permanent Committee for Human Rights in Antioquia, in his Medellín office.

3. Less than two months after Valle's murder, three assassins killed human rights lawyer Eduardo Umaña in his Bogotá apartment. Umaña's murder came only a short time after the Commission adopted the draft declaration on human rights defenders. During a strike of State employees on 19 October 1998 Jorge Ortega, vice-president of one of Colombia's largest unions and a human rights defender, was killed. Ortega had been the target of many death threats and had made a final request for government protection the day before his murder. Nevertheless, the Government had delayed providing him with a bodyguard, and Ortega was alone when he was shot by a gunman outside his Bogotá apartment.

4. The Colombian army's Twentieth Brigade continued threatening human rights defenders until shortly before the unit was renamed the Military Intelligence Centre (Centro de Inteligencia Militar (CIME)). Among other things, the Twentieth Brigade supplied fraudulent information to the Attorney General's Office, linking the assassination of a former defence minister to the Intercongregational Commission of Justice and Peace, a respected human rights group. On 13 May 1998, soldiers seized the group's offices. Soldiers concentrated their search on the office of "Nunca Más", a research project sponsored by Justice and Peace that documents crimes against humanity. Soldiers forced employees to kneel at gunpoint, in order, they claimed, to take their pictures, an act more likely intended to inspire terror and evoke a summary execution.

5. In the wake of the Valle and Umaña murders, the Samper administration promised almost US\$ 1 million in emergency funds to protect threatened human rights defenders with bulletproof glass, security cameras and reinforced office doors, measures recommended by the National Police. In addition, the Internal Affairs Office (the government agency that investigates reports of official misconduct) agreed to review government intelligence files in order to purge them of information criminalizing legitimate human rights work. However, as of the time of writing, none of these measures had actually been implemented and the head of Internal Affairs Office had yet to begin a review of intelligence files.

6. Human Rights Watch calls on the Colombian authorities to implement the measures it has promised and to take further steps in order to protect the country's human rights community.

Tunisia

7. Few Governments devote as much time as Tunisia to promoting its own human rights image and to silencing citizens who present a more accurate picture. The Government has put intense pressure on human rights defenders, victims of abuses and their relatives to constrict the flow of information concerning serious abuses. The Tunisian Human Rights League (LTDH) remains under heavy police surveillance and LTDH vice-president Khemais Ksila is serving a three-year sentence for having publicly condemned government repression. Officials have restricted the Tunisian Association of Democratic Women and the country section of Amnesty International, organizations that also have dealt with human rights in a demonstrably independent and credible fashion. Prominent human rights lawyers such as Radhia Nasraoui have been singled out for severe harassment: her office was ransacked and case files stolen on three occasions since 1994 and, in March 1998, after she denounced the torture in detention of a group of students, the authorities charged her with working for a "terrorist organization". Other outspoken activists routinely face such measures as withdrawal of passports and constant plainclothes surveillance that is unnerving and intimidates victims and their families who might step forward with direct testimony of abuses.

Egypt

8. In Egypt, State Security Investigation (SSI) closely monitors the activities of the local human rights community. Groups cannot host press conferences or public meetings outside of their own small offices without special SSI permission, which is rarely granted. On 15 October 1998, at 3 o'clock in the morning, police raided the Cairo office of the Arab Program for Human Rights Activists, apparently concerned at APHRA work in support of Khemais Ksila and other Tunisian human rights defenders. On 1 December the State security prosecutor detained Hafez Abu Sa'da, secretary-general of the Egyptian Organization for Human Rights, following EOHR documentation of physical abuse by the police of hundreds of residents of al-Kosheh village, including women and children, in August 1998. The authorities held Abu Sa'da incommunicado until 5 December and released him on bail on 6 December, but that same day called in EOHR lawyer Mustafa Zeidan for questioning. On 7 December, Minister of Interior Habib al-Adly charged that "certain human rights groups" are part of "a slander campaign" against the country, and the authorities have refused to close the investigation.

Syria

9. Syria does not permit human rights defenders to operate inside the country. In 1991-1992, the authorities arrested activists and supporters of the Committees for the Defense of Democratic Freedoms and Human Rights in Syria (CDF), a nascent human rights network. Seventeen were tried in the State security court, in proceedings that did not meet international

fair-trial standards. The court sentenced 14 in March 1992 to prison terms ranging from 3 to 10 years. Nizar Nayouf, the secretary-general of CDF, received the longest sentence.

10. Since 1993, Nayouf has been separated from his imprisoned CDF colleagues and held in solitary confinement in military prisons. He has permanent spinal injuries as a result of torture and suffers from other serious health problems. In September 1998, Human Rights Watch received information that Nayouf was diagnosed as having Hodgkin's disease, a form of lymphatic cancer, but was being denied necessary medical treatment unless he renounces his political beliefs and signs an admission that he made false statements about the human rights situation in Syria. The Government of Syria denies that Nayouf has Hodgkin's disease and contends that he has received proper medical care. However, it has not granted independent doctors access to Nayouf.

11. Human Rights Watch requests the Commission to call on Tunisia, Egypt and Syria to cease their sustained and systematic campaigns to silence and cripple human rights defenders in their countries. Specifically, the Commission should:

(a) Urge the Tunisian authorities to release Khemais Ksila immediately and unconditionally, and to cease its campaign of harassment and repression against human rights defenders;

(b) Urge Egypt to close the files of investigations into the legitimate work of that country's human rights defenders, and to protect the right of those defenders to exercise fully their right to freedom of association and free expression; and

(c) Urge Syria to release immediately and unconditionally Nizar Nayouf and others imprisoned because of their human rights activities, and to restore the long-denied rights of freedom of association and expression.

12. In addition, Human Rights Watch urges the Commission to appoint a new special rapporteur to monitor the implementation of the Declaration on Human Rights Defenders worldwide. The special rapporteur would examine whether national standards and practice conform to the Declaration and could intervene in cases of harassment or persecution of monitors.



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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[22 January 1999]

1. Human Rights Watch has repeatedly expressed its view that the United Nations has not used fully its tremendous potential to address human rights issues worldwide. We consider the encouragement of the effective functioning of the United Nations human rights mechanisms one of our priorities. Therefore, we wish to highlight for the Commission several situations in which we believe the United Nations needs to take specific steps in order to contribute more effectively to the protection and promotion of human rights in the countries and areas concerned.

Algeria

2. The human rights situation in Algeria remains extremely grave. At the fifty-fourth session of the Commission, Human Rights Watch called for the appointment of a special rapporteur on the situation there. While members declined to introduce such a resolution, several publicly linked their decision to assurances by the Government that the United Nations thematic mechanisms would have access to the country. Since then, murderous armed attacks against civilians and sexual violence directed at women have claimed hundreds of new victims, but the promised access is still denied. The Government has allowed no independent inquiry, either Algerian or international, for the purpose of determining responsibility for the killings. Meanwhile its forces continue to engage in serious abuses such as torture, extrajudicial executions and forced "disappearances."

3. In the light of the gravity of the continuing abuses and the Government's refusal to allow a credible investigation into the sources of the violence, the Commission should appoint a special rapporteur on the situation in the country, with instructions to work jointly with the relevant thematic mechanisms and with the resources and authority to investigate gross and systematic abuses committed by armed groups and by the security forces.

Bahrain

4. Human Rights Watch welcomes the announcement made by the Government of Bahrain during the latest session of the Sub-Commission, agreeing to extend an invitation to the Working Group on Arbitrary Detention to visit the country. Our organization continues to receive reports of arbitrary detention and physical abuse by the security forces. The Government provides no information concerning the numbers or identities of persons detained, including those held without trial under the State Security Law, and those convicted and sentenced, or in some cases acquitted, following unfair trials before the State Security Court. No human rights groups are permitted to operate in Bahrain. The Government has denied requests by international human rights groups to conduct fact-finding missions and has reportedly threatened to disbar defence lawyers if they provide information about arrests and security court trials to the press or international monitors.

5. Human Rights Watch calls on the Commission to urge the Government of Bahrain publicly to set an early date for the visit of the Working Group and to accord it full cooperation and access to witnesses, as well as government officials.

Colombia

6. The Bogotá office of the United Nations High Commissioner for Human Rights continued to press the Government on human rights issues, including reforms to the military penal code and respect for international humanitarian law. Experts travelled throughout the country to document abuses and held regular meetings with government officials, representatives of human rights groups and Colombians wishing to deliver complaints. Human Rights Watch strongly supports the work of the office and believes that it has contributed to raising the international profile of human rights abuses in Colombia. In addition, the October 1998 visit of High Commissioner Mary Robinson to Colombia to express her profound concern was well timed. During her visit, the High Commissioner spoke out forcefully in defence of human rights defenders and against the impunity for officers that continues to reign in the tribunals run by the military.

7. However, the Government of Colombia has yet to implement recommendations submitted by the United Nations regarding long-standing issues of impunity and due process, and the abolition of paramilitary groups and their continuing ties to the Colombian military. In this regard, the increase of the number of experts in the Bogotá office from 7 to 12 was welcome, in order to increase pressure on the Government to address abuses and allow experts to concentrate on emergency situations.

Rwanda

8. Since the termination of the United Nations Human Rights Field Operation in Rwanda in July 1998, the United Nations human rights presence has been limited to education and aid to local initiatives, including a national commission. Given the continuing crisis, with "disappearances," near paralysis of the judicial system and the killing of civilians by insurgents and government forces, the Commission should broaden the mandate of the Special Representative to include monitoring the current situation.

Sudan

9. The Sudan remains the scene of some of the most severe human rights violations in the world because of abuses by all sides in the ongoing civil war. For several years now the Commission has recommended placing United Nations human rights monitors in the Sudan. The Special Rapporteur on the situation of human rights in the Sudan was requested in 1995 to assess the feasibility of this project and found that it was possible to base human rights monitors on the country's borders to receive testimony from refugees. In resolutions, it has adopted at subsequent sessions, including in 1998, the Commission has recommended giving priority to the placement of human rights field monitors. This recommendation, however, has not yet been acted upon.

10. Stationing monitors inside the country would be even more desirable, but the Government refuses, arguing that United Nations monitors are not necessary because international human rights groups such as Human Rights Watch can visit the country. We wish to inform the Commission that this is not true: in

1998, Human Rights Watch twice applied for a visa but the application was ignored, despite the fact that the Minister for Foreign Affairs of the Sudan, in a meeting, invited Human Rights Watch to visit the country.

Tajikistan

11. A June 1997 human rights needs-assessment mission to Tajikistan led by the Office of the High Commissioner for Human Rights (OHCHR) concluded that lasting peace was threatened by ongoing serious human rights violations. The mission recommended posting senior human rights experts in Dushanbe, providing human rights training for government, military, law enforcement and academic personnel, and making available constitutional and legislative advisory services and technical assistance for human rights organizations. United Nations representatives repeated these recommendations in 1998. As of the time of writing, however, no human rights specialists have been deployed to Tajikistan, United Nations human rights initiatives in general have been few and far between, and human rights monitoring continues to be glaringly absent from United Nations Mission of Observers to Tajikistan (UNMOT) activities.

12. In the meantime, respect for human rights in Tajikistan has deteriorated in the past year, fuelled mostly by the failures of the government-United Tajik Opposition (UTO) peace process that consistently threatened to collapse. The Security Council has extended the mandate of UNMOT until 15 May 1999.

13. Human Rights Watch urges the Commission on Human Rights to recommend that United Nations efforts to support the peace process include prompt action on the 1997 recommendations of OHCHR, including the immediate deployment of human rights experts to oversee human rights monitoring and training activities. In addition, we urge the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of opinion and expression to conduct investigations and report to the Commission at its fifty-sixth session.

Territory of the former Yugoslavia

14. The solution to renewed conflict, persistent ethnic discrimination and widespread displacement in the former Yugoslavia lies in effective human rights implementation. Accordingly, Human Rights Watch calls for renewal of the full mandate of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and for vigorous pursuit of that mandate, in conjunction with United Nations missions in the region.

15. In Croatia, and in Bosnia and Herzegovina, proactive human rights implementation is the only hope for resolving the gridlock over the return of displaced persons that cripples the region. The Special Rapporteur and, in Bosnia and Herzegovina, the United Nations International Police Task Force and the Human Rights Office, need to devote enhanced resources to establishing a consistent and effective field presence (well-trained in human rights monitoring); documenting and publicizing the serious human rights violations inhibiting return; engaging the local and national authorities; and insisting on accountability and redress.

16. OHCHR has recently expanded its presence in the Federal Republic of Yugoslavia (FRY) to seven field officers, signalling a much-needed commitment to human rights monitoring and implementation in that troubled country. Human Rights Watch strongly urges that additional United Nations human rights resources be allocated, however. OHCHR staff should work together with the Special Rapporteur to send a clear message to all parties to the conflict in Kosovo that there can be no justification for violations of international human rights and humanitarian law. To do so, these monitors must take proactive steps to document abuses, visit detention sites (in coordination with the International Committee of the Red Cross) and monitor politically motivated trials. Moreover, Human Rights Watch calls on the Commission to press the FRY authorities to cooperate fully with the International Tribunal and to grant the requested visit by the Special Rapporteur on extrajudicial, summary or arbitrary executions. Finally, we urge the Commission to endorse the role that the Special Rapporteur on the former Yugoslavia has played in supporting representatives of Serbian civil society working in an increasingly restrictive environment, especially the independent media and academics.

Permanent forum for indigenous people

I. BACKGROUND

1. Although the world's indigenous people have for centuries been helping to enrich the world's civilizations with the diversity of their cultures and their forms and modes of social organization - an invaluable contribution to the common heritage of mankind - the survivors of that long-distant hecatomb of colonialism continue to be assailed and excluded from the international community.
2. It is a paradox that, on the threshold of the third millennium and 50 years after the adoption of the Universal Declaration of Human Rights, racism and racial discrimination against the indigenous people and brutal spoliation of their lands and natural resources has reared its ugly head, while they are being forced to accept the neocolonial model as the world's universal value. It is dispiriting to observe the egotism, hypocrisy and lack of political will both of the northern Powers and the southern elites which are endeavouring to close the portals of the temple of human rights on the victims and condemn their defenders.
3. On the eve of the twenty-first century, a large proportion of the world's population is being unjustly excluded from economic, political and social life and is denied the protection afforded by the international norms. Reliable reports delivered at various United Nations forums state that indigenous inhabitants live outside the concert of the international community and are deprived of the right to participate in regional and international forums dealing with indigenous issues, because the vast majority of their grassroots representative organizations are not recognized as having consultative status by the Economic and Social Council.
4. In order to rectify this anomaly in the United Nations system, the Vienna Declaration and Programme of Action (1993) recommended that priority consideration be given to the establishment of a permanent forum for indigenous people within the United Nations system.
5. To that end, the Vienna World Conference appealed to the States and the United Nations bodies to guarantee indigenous people free and full participation in all aspects of society, particularly in the United Nations forums directly or indirectly concerned with their rights and freedoms.
6. In accordance with those principles, the General Assembly reaffirmed, in resolutions 48/163 of 21 December 1993 and 52/108 of 12 December 1997, that one of the central aims of the International Decade of the World's Indigenous People was precisely to give priority consideration to the establishment in Peru of a permanent forum for indigenous people.
7. The recommendation and the appeal to the States to consider the establishment of a permanent forum capable of responding to the age-old protest of millions of indigenous inhabitants as a matter of priority are encouraging. In that regard, the Commission on Human Rights, at its fifty-fourth session, decided to set up an unlimited working group with the mandate to prepare and examine specific proposals from Governments and indigenous populations in

connection with the establishment of a permanent forum within the United Nations system,

8. It would be only fair for the United Nations, 50 years after its founding, to open its doors to indigenous people and national minorities deprived of the right to speak out in their own countries and guarantee them access to international platforms. Their irreversible integration as subjects of the international community should be part and parcel of the movement for decolonization of dependent peoples, more particularly in the democratization process now underway in the United Nations system.

9. In the progressive march of history, the establishment of a permanent forum could serve as reparation for one of the most anachronistic injustices of western civilization, guaranteeing effective participation for indigenous populations and nations that have been excluded from the international community, perceived as second-class citizens in their own countries, despoiled of their lands and prevented from enjoying their natural wealth and resources.

10. The need to institute a permanent body accessible to all indigenous communities, among other things, is explained by the just recognition of the concept of PEOPLES and their active participation in the planning and implementation of the programme of action for the International Decade, the aim of which is to "solve the problems besetting indigenous peoples in such areas as human rights, the environment, development and health and education".

11. In view of the mounting numbers of United Nations standard-setting and operational activities, only the creation of an effective mechanism can ensure the participation of indigenous people. This calls for the establishment of a forum to serve not as just another bureaucracy, but as an advisory, deliberative and operational United Nations organ; that is to say, an unrestricted platform for those who have no say, with a permanent secretariat allocated adequate funds from the United Nations budget.

12. In conclusion, by virtue of the principles of universality, indivisibility and interdependence of fundamental rights and freedoms, the permanent forum would recognize indigenous identity as a political and economic entity; that is, as a subject of law, endowed with full powers to contribute to the adoption of United Nations decisions.

II. MANDATE OF THE FORUM

13. By virtue of its quite precise powers in the area of economic, social and cultural rights, as well as civil and political rights, the permanent forum should be established at the highest level within the United Nations system and come directly under the Economic and Social Council.

14. In its capacity as one of the subsidiary organs of the Economic and Social Council, it be empowered to deal with all matters affecting indigenous populations, such as the rights to development, the environment, health, education, etc. Following a dispassionate examination of the problems stated, it would adopt decisions as befits its competence and formulate recommendations to the Secretary-General and the Economic and Social Council through the Commission on Human Rights.

15. The functions and prerogatives of the permanent forum for indigenous people would be as follows:

- a) To make a priority study of the problems connected with the rights to free and sustainable development, collective ownership of land and demilitarization of their territories with a view to rehabilitating ancestral modes of production and guaranteeing the indigenous populations enjoyment of their natural wealth and resources;
- b) To conduct studies and research to determine the causes of the constant environmental degradation and air and water pollution, adopting measures for preserving mother earth by revitalizing ancestral civilizations' forms and modes of social organization;
- c) To make an informed study of social phenomena such as racism, racial discrimination, exclusion, extreme poverty, rural exodus, health, infant mortality, education, protection of intellectual property (medicinal herbs, etc.). These issues that have a vast human dimension should be addressed with scrutiny of, and in close connection with, the neo-liberal economic policies and regimes imposed by the international financial institutions;
- d) To promote, coordinate and evaluate the programmes of action within the framework of cooperation for the International Decade of the World's Indigenous People from the budget of the Voluntary Fund for the Decade, the Fund for the Development of Indigenous Peoples in Latin America and the Caribbean and other public or private voluntary contributions, the purpose of which is to strengthen peace and promote the prosperity of peoples;
- e) To devise alternative development strategies for ensuring the survival of indigenous communities threatened with extinction and publish reports on their socio-economic conditions and the extreme poverty that resulted from the unlawful usurpation of lands and natural resources by the transnational corporations installed on their territories. In this context, the forum would contribute to the elaboration of juridical mechanisms designed to regulate the activities of the transnational corporations;
- f) To examine as a matter of priority the petitions, statements and complaints concerning violations of human rights and fundamental freedoms on indigenous territories and make recommendations to the Secretary-General through the Commission on Human Rights and, in the best-case scenario, submit them to the International Criminal Court against the accused perpetrators of grave violations;
- g) To settle by peaceful means any controversies and disputes that arise between indigenous populations and Governments, so as to contribute to peacekeeping, working in peace and friendship and reciprocal cooperation among peoples;
- h) To create working groups composed of indigenous experts and government representatives with the mandate to oversee enforcement of the Declaration, ILO Convention 169 and other international instruments in force, the conclusions of which would be submitted to the Economic and Social Council and the Commission on Human Rights;

i) To advise the bodies of the United Nations system, Governments and indigenous organizations on the formulation of policies for developing and utilizing financial and human resources. To that end, the Indigenous Parliament and indigenous notables and academics would be convoked to a wide-ranging debate to evaluate the Forum's activities and the degree of indigenous participation in implementation of the Programme of Activities of the International Decade of the World's Indigenous People.

III. STRUCTURE OF THE FORUM

16. Equal representation on the forum should abide by the criterion of equitable geographical distribution and comprise government and indigenous representatives. However, its doors should be open to States, specialized agencies, non-governmental organizations, independent experts and noted academics as observers.

a) The permanent forum should be composed of 22 full members in the following proportion: 10 government representatives, 10 indigenous representatives and one representative of the Secretary-General and another of the Office of the United Nations High Commissioner for Human Rights.

b) In compliance with the principle of geographical distribution that ensures equitable regional representation, the membership of indigenous representatives should be structured as follows: two representative from South America, two from Central America and the Caribbean, two from the United States and Canada, one from Australia, one representative from the Nordic countries, one from the indigenous population of the far Russian north and one representative from Asia and Africa;

c) The indigenous candidates elected by their local, regional or national grassroots organizations should be identifiable by their indigenous identity and should meet the following conditions: they must be renowned for their irreproachable integrity, moral authority and competence and, more particularly, their long experience and a sound grasp of indigenous issues;

d) The governmental and indigenous members should be appointed by the Economic and Social Council by consensus and in accordance with established procedures. The indigenous representatives could be appointed from a list of candidates prepared and submitted by the regional organizations to the Economic and Social Council through the Commission on Human Rights and on its recommendation;

e) The indigenous members would be entitled to participate as full members in the deliberations for the representation, actions and rights, not only of their respective communities and organizations, but of all indigenous nations;

f) The government and indigenous members should be confirmed in their functions through a resolution of the Economic and Social Council for a three-year term, with the possibility of re-election to a second term;

g) Barring a decision to the contrary, the forum could meet for two weeks each year in Geneva and, preferably in the countries with a fair

indigenous population, and adopt their decisions by a majority the member present and voting;

h) The forum should be attached to the Office of the United Nations High Commissioner for Human Rights headquartered in Geneva, and open its indiscriminately to all indigenous people and their representative organizations, whether or not they are recognized by the Economic and Social Council as having consultative status;

i) By its nature and decision-making capacity, the permanent forum should have an independent secretariat comprising a minimum of four officials, two of whom should be high-ranking indigenous officials in accordance with regulations;

j) For the fulfilment and exercise of its powers and, in accordance with its mandate in the area of human rights and related freedoms, the permanent forum should be assigned sufficient financial, technical and human resources from the regular budget of the United Nations and the voluntary contributions of the international community.



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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement submitted by the Lawyers Committee for Human Rights,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[27 January 1999]

The situation of human rights in Northern Ireland

1. In April 1998 the Good Friday Agreement was signed, providing a framework for establishing peace and enabling the return to a normal society in Northern Ireland. The Agreement places a premium on human rights, establishing a Human Rights Commission, an Independent Commission on Policing for Northern Ireland and a Criminal Justice System Review. In addition, the Good Friday Agreement calls for the removal of emergency powers: "The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with: ... (iii) the removal of emergency powers in Northern Ireland." 1/

2. Nevertheless, in the wake of the Omagh bombing of August 1998, the British Government has introduced additional emergency measures that further erode the right to silence and give greater probative force to statements of police officers. 2/ Furthermore, in a recently published Consultation Paper on Legislation Against Terrorism, the British Government has indicated its belief that "the time has come to put that [counter-terrorist] legislation onto a permanent footing." 3/

3. As the Lawyers Committee has noted in the past, emergency powers in Northern Ireland have been linked to serious human rights violations. The Lawyers Committee believes that the maintenance of emergency legislation inevitably will continue to create conditions leading to such violations. Effective safeguards at pre-trial and trial stages help to prevent circumstances of torture and other cruel treatment. Such due process rights continue to be abrogated under the current emergency legislation regime in Northern Ireland. 4/

4. Following its latest examination of the United Kingdom, the United Nations Committee against Torture concluded, *inter alia*, that the continuation of the state of emergency in Northern Ireland amounted to a factor impeding the application of the provisions of the Convention against Torture, "noting that no exceptional circumstances can ever provide a justification for failure to comply with the Convention." 5/ In addition, the Committee against Torture recommended that the following steps be taken:

(a) The closure of detention centres, particularly Castlereagh, at the earliest opportunity;

(b) The abolition of the use of plastic bullet rounds as a means of riot control;

(c) Reconstruction of the Royal Ulster Constabulary (RUC) so that it more closely represents the cultural realities of Northern Ireland. This should continue to include an extensive programme of re-education for members of the RUC directed towards the objectives of the Peace Accord and the best methods of modern police practices. 6/

5. The Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, published an extensive report on Northern Ireland in April 1998 (E/CN.4/1998/39/Add.4). The Report found that the RUC persists in the intimidation and harassment of defence lawyers in Northern Ireland; that detainees are systematically denied access to counsel; and that the United Kingdom Government's failure to uphold the right to silence and the right to trial by jury resulted in miscarriages of justice and a lack of confidence in the justice system on the part of a large segment of society in Northern Ireland. To address these problems Mr. Cumaraswamy recommended the reinstatement of safeguards, which are currently restricted by the emergency powers. These included:

- (a) The provision of immediate access to legal advice in all cases, including during police interviews;
- (b) The introduction of video- and audio-recording of police interviews;
- (c) Restoration of the right to remain silent under police questioning and an end to the judicial practice of drawing negative inferences from a defendant's decision not to testify;
- (d) Abolition of the permissive standard for admitting at trial confession evidence procured by psychological pressure, deprivation, or other non-violent forms of coercion;
- (e) Restoration of the right to trial by jury.

6. In addition, the Special Rapporteur recommended that the United Kingdom launch an independent inquiry into the circumstances surrounding the murder of defence lawyer Patrick Finucane in Northern Ireland 10 years ago. Finucane was murdered in his home, under circumstances that suggest that elements of the security forces colluded in the killing. The United Kingdom Government has thus far refused to open a public inquiry into the case, stating that the matter lacks a sufficient degree of urgent public importance. The Lawyers Committee supports the Special Rapporteur's recommendation and calls for a full independent inquiry to be undertaken. The Lawyers Committee urges the Commission members to do likewise.

7. The Northern Ireland Human Rights Commission has a general task under the Agreement of advising the Government with respect to rights legislation. In addition, it has the specific role of advising on the scope of defining rights supplementary to those in the European Convention on Human Rights, to constitute a Bill of Rights for Northern Ireland. The Northern Ireland Bill, which establishes the Human Rights Commission as called for in the Agreement, grants limited power to the Commission to bring court proceedings or provide assistance to individuals doing so. Parliament undertook to cooperate with the Human Rights Commission in investigations. However the Government refused to give the Commission powers to compel witnesses and discover documents. Both of these powers are envisaged by the United Nations minimum standards for

human rights commissions (the Paris Principles). 2/ The Government is currently advertising for membership of the new Human Rights Commission. The Lawyers Committee urges the Government to appoint members with a strong track record on human rights.

Notes

1/ "The Good Friday Agreement", April 1998, section Security, paragraph 3.

2/ Criminal Justice (Terrorism and Conspiracy) Act 1998.

3/ Legislation Against Terrorism - A consultation paper (December 1998), Cm 4178, Introduction, paragraph 4.

4/ See: Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers. The Murder of Patrick Finucane (Lawyers Committee for Human Rights, New York, 1993), pp. 17-18 and 62 ff., and At the Crossroads: Human Rights and the Northern Ireland Peace Process (Lawyers Committee for Human Rights, New York, 1996), pp. 3-56 for detailed comment on emergency provisions in Northern Ireland. In maintaining the state of emergency in Northern Ireland, the United Kingdom Government continues to derogate from article 9 (3) of the International Covenant on Civil and Political Rights and article 5 (3) of the European Convention on Human Rights.

5/ See CRC/C/SR.360.

6/ Ibid.

7/ Principles relating to the status of national institutions for the promotion and protection of human rights. General Assembly resolution 48/134, annex. Methods of operation (b) ("Within the framework of its operation, the national institution shall: ... Hear any person and obtain information and any documents necessary for assessing situations falling within its competence").

Violations of human rights in Turkey

1. The Lawyers Committee for Human Rights remains concerned about the continuation of widespread human rights violations in Turkey. Lawyers Committee delegates who have visited Turkey in recent months have been encouraged, however, by the extensive debate about human rights issues in the local media, and the stated commitment of many government officials to take necessary action in the field of human rights. This recognition of the existence of a problem is a welcome contrast to previous official positions that have denied the existence of human rights violations. The Lawyers Committee also welcomes the visit of the Special Rapporteur on torture to Turkey.
2. Nevertheless, severe human rights problems remain in Turkey and essential measures to curtail widespread violations of human rights have not been implemented by the Government. Safeguards against torture for detained criminal suspects are insufficient; human rights advocates, lawyers and intellectuals continue to be prosecuted and imprisoned for the non-violent expression of their views critical of government policy; and, procedures for holding accountable members of the security forces involved in gross violations of human rights, such as torture or extrajudicial killing, are seriously deficient, fostering a climate of impunity in which violations multiply.
3. With the weakness of the civilian Government, Turkey's military plays a more overt role in politics, a factor unlikely to foster the promotion of human rights reform and democratization. Ambitious programmes of legislative reform that promise to have a positive effect on areas of abiding concern in Turkey's human rights record, such as freedom of speech and torture, have been blocked by political uncertainty. This uncertainty undermined the ability of the coalition Government of former Prime Minister Mesut Yilmaz to carry out its promises. Strong, stable civilian Government is a precondition of substantial progress in the human rights area.

Impunity

4. In several ongoing cases in which members of the security forces are facing charges for involvement in torture or extrajudicial killing, there appears to be a pervasive reluctance to hold members of the security forces accountable for violations they may commit. Accused officers remain on active duty, in a position to intimidate their accusers and witnesses in the case. Hearings are attended by large numbers of plain-clothes police and security officers who pack the courtroom to intimidate and threaten lawyers acting on behalf of victims of violations. There is an urgent need for legislative reform in the way in which complaints against members of the security forces are investigated and prosecuted, as well as changes in official attitudes about holding them accountable for involvement in human rights violations. Specifically, administrative hurdles to the prosecution of members of the security forces resulting from the 1913 Law on the Procedures for the Investigation of Civil Servants must be revised to comply with Turkey's

obligations as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other binding international instruments. In accordance with these obligations, Turkey must carry out prompt, thorough and impartial investigations into allegations of torture.

The persecution of human rights advocates and lawyers

5. Last May, the world received the chilling news of the near fatal attack on Akin Birdal, the head of Turkey's largest human rights organization, the Human Rights Association. This type of attack, which drew widespread international and domestic condemnation, is facilitated by an atmosphere in which the promotion and protection of human rights is too often seen as a subversive activity. Mr. Birdal continues to face criminal prosecutions and convictions arising from his non-violent activities as a human rights activist. The prosecution of other human rights advocates for their statements about human rights continues. Branches of human rights organizations remain closed, notably the Diyarbakir branch of the Human Rights Association, and the Urfa branch of the Organization of Human Rights and Solidarity for Oppressed People (Mazlum Der). The Turkish Government should rescind the closure orders against branches of non-governmental human rights organizations and should desist from the prosecution of those who expose State involvement in human rights violations. Lifting restrictions on independent human rights advocacy is an important part of changing public attitudes to human rights in Turkey.

6. Turkey should undertake to fully implement the "Declaration on Human Rights Defenders" adopted by the General Assembly, which reiterates the obligation of States to protect and facilitate the work of human rights defenders and affirms that "everyone has the right, individually and in association with others, to promote and strive for the protection of human rights and fundamental freedoms at the national and international level". 1/

7. Lawyers who represent political cases before State Security Courts are also subjected to official pressure, including threats, harassment and even prosecution on apparently fabricated charges. The case against 25 lawyers from Diyarbakir, dating from 1993, is the most prominent current example of this widespread problem. The charges against these 25 lawyers, many of whom were tortured and forced to sign inculpatory statements during pre-trial detention, do not stand up to scrutiny and should be dismissed.

State Security Court procedures

7. Two aspects of these exceptional tribunals especially concern the Lawyers Committee. Firstly, the protracted period of pre-trial detention permitted under the law and the consequent delay in the detainee's access to counsel violates international standards. As many prosecutions in State security cases are based on statements taken from the accused during this pre-trial period, access to counsel at this time is particularly important. Incommunicado detention also increases a detainee's vulnerability to torture. In October 1998 the Turkish Government issued a revised Regulation on Apprehension, Police Custody and Interrogation. Unfortunately, this new regulation did not remove the prohibition on a State security detainee having

access to a lawyer during the first four days of detention. Article 20 of the Regulation makes clear that: "In crimes falling under the scope of the State Security Courts, the apprehended person may meet his lawyer only upon extension of the custody period by order of the Judge." This judicial review of detention takes place after four days.

8. Secondly, the presence of a military officer as a member of the three-person judicial panel raises concerns about the independence of the court. In the case of Incal v. Turkey, in June 1998, the European Court of Human Rights ruled that the applicant "could legitimately fear that because one of the judges of the Izmir National Security Court (sic) was a military judge it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case". The Court found a violation of article 6 (1) of the European Convention on Human Rights which provides for a "fair and public hearing ... by an independent and impartial tribunal ..."

Recommendations

9. The Lawyers Committee for Human Rights recommends the abolition of exceptional courts and the unification of the penal courts; pending that, procedures in State Security Courts should be brought into line with prevailing norms in international human rights law which require that all persons arrested or detained "shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention".

10. Given the gravity of the situation, the Lawyers Committee for Human Rights calls upon the Commission on Human Rights to pay increased attention to the ongoing human rights violations in Turkey. The Lawyers Committee calls upon Turkey to implement fully the recommendations issued by the Commission's Special Rapporteur on torture after his visit to the country. The Committee also urges Turkey to extend an invitation to the Special Rapporteur on the independence of judges and lawyers, who has repeatedly indicated his interest in conducting a mission to Turkey.

Note

1/ Article 1. For more information on the "Declaration on Human Rights Defenders", see "Protecting Human Rights Defenders: analysis of the newly adopted Declaration on Human Rights Defenders", Lawyers Committee for Human Rights, January 1999.



Retaliation against lawyers who support human rights

1. The Lawyers Committee for Human Rights is deeply concerned about the harassment and abuse of lawyers whose work as practising attorneys supports basic human rights. Though international instruments nominally protect human rights lawyers from abuse, in practice they often face restrictions, prosecution, or outright violence in retaliation for their work. Whether direct or indirect, physical or "legal", such measures threaten not only the work of individuals but also the integrity of important institutions, and by extension, the societies to which they belong.
2. Out of the many cases of violations against human rights lawyers that the Lawyers Committee for Human Rights encounters each year, those that follow are merely representative instances of a much larger pattern of abuse.

Professional restrictions

3. Lawyers often face threats of administrative sanction and professional harassment in retaliation for their advocacy in support of human rights. Government action may take the form of professional restrictions, such as disbarment or disqualification from the practice of law, or restrictions on speech or public advocacy.
4. The case of Vera Stremkovskaya, a Belarus lawyer, is illustrative. Ms. Stremkovskaya has faced repeated threats of disbarment for her pro bono representation of politically unpopular clients. Concerned about the state of human rights and the practice of law in Belarus, Ms. Stremkovskaya attended meetings with human rights groups in New York in September 1998. She criticized deficiencies in Belarus' legal system, making reference to the harsh conditions of pre-trial confinement for two of her clients. Upon her return, apparently spurred by reports filed by Belarusian officials who attended the meetings, the Justice Ministry accused her of "illegal" and "unethical" behaviour - revealing confidential information about the investigation against her clients - though the same information had been widely reported in the Belarusian media.
5. Since then, high government officials have threatened administrative and criminal sanctions. The supportive response for Ms. Stremkovskaya from the international community has only exacerbated her "crime" in the eyes of Belarusian officials, some of whom have told her she must choose between the practice of law and human rights advocacy in order to avoid sanctions. This case is not isolated; indeed, Ms. Stremkovskaya is one of a dwindling number of Belarusian lawyers who remain available to represent dissidents in criminal matters.
6. When lawyers like Ms. Stremkovskaya speak about their cases or legal system, their comments are specifically protected by international law, including article 23 of the United Nations Basic Principles on the Role of Lawyers, which provides that:

[Lawyers] shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local,

national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

7. In addition, the right to promote human rights by speech and association is protected by articles 1, 5 and 6 of the United Nations "Declaration on Human Rights Defenders". These safeguards help implement the fundamental right to free speech and association guaranteed by articles 19 and 22 of the International Covenant on Civil and Political Rights, and articles 19 and 20 of the Universal Declaration of Human Rights. When lawyers face professional restrictions because of their human rights activities, these long-standing international rights are violated.

Abuse of legal process

8. States often use lawsuits, both criminal and civil, as a tool for punishing human rights lawyers. For example, 25 lawyers from Diyarbakir, Turkey, are facing criminal sanctions in apparent retaliation for representing unpopular clients. For more than five years, Turkish officials have pursued charges that the attorneys have abetted a terrorist organization. During this period, at least 16 of the lawyers were subjected to torture while in pre-trial detention. Each faces up to seven years' imprisonment if convicted.

9. The very evidence presented against these lawyers suggests that charges were motivated by their support for local human rights organizations and representation of unpopular defendants. The primary evidence is testimony of a convict who made accusations against the lawyers in return for commutation of his death sentence and release from prison. A second witness recanted her coerced testimony, while other prosecution evidence is either implausible or contradictory.

10. Other lawyers have suffered retaliation at the hands of the judiciary for their attempts to vigorously defend their clients and uphold international procedural requirements. Zainur Zakaria, a Malaysian lawyer representing former Deputy Prime Minister Anwar Ibrahim, was recently convicted of contempt of court for presenting an affidavit alleging that prosecutors fabricated evidence against his client. Refusing to rule on the merits of Mr. Zainur's argument, the judge summarily ruled it frivolous.

11. Even international officials may face retribution for their official acts. Dato' Param Kumaraswamy, United Nations Special Rapporteur on the independence of judges and lawyers, was sued for libel based upon comments made about the Malaysian legal system in the course of his mission for the United Nations. Despite the clear immunity afforded to special rapporteurs by international treaty, judicial and executive branch officials disregarded the United Nations Secretary-General's certificate of immunity on Mr. Kumaraswamy's behalf, forcing him to defend the suit for many months in Malaysia, at tremendous personal cost.

12. The misuse of legal process to punish lawyers for their representation of unpopular clients and support for human rights is strictly prohibited by international law. Paragraphs 16, 17, 18 and 20 of the Basic Principles prohibit prosecution and other sanctions for actions taken by lawyers in

accordance with their professional duties. Similarly, the "Declaration on Human Rights Defenders" requires States to protect from criminal sanction those who promote human rights. These requirements are intended to support the fundamental right to fair use of criminal process and sanctions. Punishing lawyers in retaliation for internationally protected activity clearly violates these norms.

Physical violence

13. Physical abuse, torture and other harassment continue to accompany administrative and judicial means to suppress the work of lawyers in support of human rights. Particularly disturbing is the case of Letizia del Valle Gimenez, an Argentine lawyer who has been subjected to degrading physical abuse in retaliation for her support of human rights. During visits to her clients in prison, officials have required intrusive vaginal searches, performed by female guards in an unsanitary manner and accompanied by verbal harassment. The stress from these repeated searches has aggravated a pre-existing illness, a condition about which prison officials were aware when the abuse occurred.

14. These searches are clearly retaliatory. Harassment began shortly after Ms. Gimenez filed a complaint regarding the torture of one of her clients in another prison. As a result of the abuse, Ms. Gimenez has been unable to continue the practice of law. Her attempt to remedy the situation in local courts has been largely ineffective as the courts have so far ignored a 1996 decision by the Inter-American Commission on Human Rights in *X and Y v. Argentina*, which laid out specific rules to remedy the problem of unlawful and invasive searches of females in Argentine prisons. Ms. Gimenez' clients have been thoroughly intimidated and prison officials continue to claim the right to subject her to this treatment.

15. Protecting human rights lawyers from physical abuse is a clear obligation of international law, secured explicitly by paragraph 17 of the Basic Principles and article 12 of the "Declaration on Human Rights Defenders". These requirements echo basic international norms protecting all individuals from arbitrary violence, torture or other abuse. The international community should not countenance such acts by any State against any person.

Conclusion

16. These examples highlight the ways that States manipulate presumptively legitimate administrative and legal mechanisms and resort to physical abuse in order to retaliate against human rights lawyers. While such abuse is not unique to lawyers, the examples above suggest two conclusions regarding lawyer-specific human rights violations. First, such abuses are particularly troubling because their effects are felt both by the lawyer and his or her clients. Thus, the violations described above have a devastating effect, depriving the lawyer's already vulnerable clients of necessary legal protection. Without legal assistance, these clients, who are often victims of abuses themselves, are left unprotected from the very State responsible for the abuse of their lawyer. Thus, an effective legal community, free to support international rights norms without fear of professional, legal or

physical sanction, is necessary to help protect other vulnerable citizens. The Commission on Human Rights should highlight the unique role that lawyers exercise and strongly condemn retaliatory sanctions against lawyers who support human rights.

17. In addition, harassment of lawyers has the effect of forcing them to choose between support for human rights and the practice of law; a false "choice" that is premised on a separation of the practice of local law from support for international human rights. As the Basic Principles on the Role of Lawyers and the "Declaration on Human Rights Defenders" make clear, lawyers are entitled and encouraged to incorporate human rights principles into their practice, and should not suffer retribution for doing so. The Lawyers Committee calls upon the Commission on Human Rights to support efforts to strengthen the protection of human rights lawyers in international law.
